TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 346. 89

WILLIAM GRANT, RECEIVER OF THE ESTATE OF OLIVER J. MORGAN, PLAINTIFF IN ERROR,

vs.

JOHN A. BUCKNER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED APRIL 8, 1897.

(18,551.)

(16,551.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 347.

WILLIAM GRANT, RECEIVER OF THE ESTATE OF OLIVER J. MORGAN, PLAINTIFF IN ERROR,

vs.

JOHN A. BUCKNER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 8, 1898.

a Supreme Court of Louisiana.

WILLIAM GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 12372.

1 *Petition and Exhibit B.*

Filed Nov. 26th, 1896.

To the hon. the judge of the 7th judicial district court for the parish of East Carroll, State of Louisiana:

The petition of William Grant, receiver of the estate of Oliver J. Morgan, duly appointed by the circuit court of the United States for the eastern district of Louisiana, in the care of Israel Waters, administrator, against M. F. Johnson *et al.*, No. 6612 on the docket of said circuit court, with respect represents that John A. Buckner, who resides in the parish of East Carroll, State of Louisiana, is justly indebted unto him in the sum of two thousand five hundred and seventy-five & $\frac{95}{100}$ dollars, for this, that petitioner in hi scapacity aforesaid did on the 1st day of January, 1891, by the written lease filed herewith, marked Exhibit "B," lease unto the said John A. Buckner for the year 1891 the Melbourne plantation, situated in said parish, for a rental value of $2,500.00, and that said Buckner on said date executed and delivered to him three certain promissory notes in evidence of the amount so due for $833.33 each, payable respectively on the 15th day of November, the 1st of December, and the 15th of December, 1891; which notes are filed herewith for reference and marked C, D, & E respectively. Defendant was credited by agreement with note falling due November 1 with the sum of $250.00 for repairs and, besides, paid thereon the sum of $291.66, and paid on each of the other two notes the sum of four hundred and sixteen & $\frac{66}{100}$ dollars.

Plaintiff admits that defendant was adjudged to be the owner of $\frac{1}{2}$ of said plantation by a decree of the said United States circuit court entered about March 1st, 1891, and does not owe the other $\frac{1}{2}$ of said notes, but plaintiff shows that for the year 1891 he paid the taxes on the whole of said plantation, and that defendant owes him one-half thereof, amounting to $430.60, by way of contribution.

Plaintiff further avers that said lease was tacitly renewed for the year 1892 at the same rental, and that defendant owes him $\frac{1}{2}$
2 of the sum of $2,500.00, which he has not paid, and for $\frac{1}{2}$ of the taxes for said year, amounting to $445.35. The whole amount of taxes due thereon having been paid by petitioner and the share due by defendant not having been refunded to him, petitioner further shows that defendant is further indebted to him for the lease of the Morgana plantation, in said parish, for the years 1891 & 1892 at an annual rental of $200.00, which he has not paid and still owes; that this lease was by parol. Petitioner annexes

hereto a detailed account herein claimed as due, which is marked A, referred to for greater certainty.

Wherefore petitioner prays that defendant may be cited to answer this demand, and that he may have judgment against him for the sum of $2,525.95, twenty-five hundred and twenty-five & $\frac{95}{100}$ dollars, with legal interest from January 1st, 1893, until paid, and costs of suit; and he prays for all general relief in the premises.

C. S. WYLY, *Att'y.*

EXHIBIT "B."

William Grant, acting herein as receiver of the property, under authority of the circuit court of the United States for the eastern district of Louisiana, in the case of Waters, administrator, *vs.* M. F. Johnson, No. 6612 on the docket of said court, hereby leases unto John A. Buckner for the term of one year, beginning January 1st, 1891, and ending December 31st, the following real estate, viz:

The Melbourne plantation, together with the store, cottage, grounds, and landing privilege, situated on the river front of said plantation, all in the parish of East Carroll, State of Louisiana, upon the following prices and conditions, the lessee to pay as rent for said term the sum of two thousand two hundred dollars in installments as following:

$833.33 November 15, 1891.
$833.33 December 1st, 1891.
$833.33 December 15, 1891.

For which several installments he has delivered to the
3 lessor his notes payable at said dates respectively.

The lessee to make all necessary repairs, for which he is to be allowed a deduction of two hundred and fifty — and no more, which is to be credited on the note falling due Nov. 15, 1891, upon proof that repairs to that amount have been made and the filing of vouchers.

In case any one of said notes shall not be paid at maturity, the whole rent shall become immediately due and exigible without the necessity of putting the lessee in default.

New Orleans, January 1, '91.

WM. GRANT, *Receiver.*
JOHN A. BUCKNER.

Answer.

Filed March 29, 1895.

7th District Court for East Carroll Parish, Louisiana.

WM. GRANT, Receiver, *vs.* JOHN A. BUCKNER. } No. 312.

Now comes John A. Buckner, defendant in the above-styled case, and for answer to plaintiff's petition with respect shows—

That he denies all and singular the allegations of plaintiff's peti-

tion, except what he shall hereinafter admit. He admits that he cultivated the Melbourne plantation in 1892, and that the leased price of 1891 was $2,500.00, but shows that instead of said lease being tacitly renewed there was a verbal contract for 1892 between him and the plaintiff, by which the rent of that year was to be paid on a basis of $1,800 for the whole place, of which respondent's liability to petitioner was one-half, or $900.00 *dollars*, instead of $1,250.00, as claimed by him.

Respondent admits that plaintiff paid taxes on the whole of Melbourne for 1891 & 1892, but shows that the taxes on said plantation in 1891 amounted to only $525.00 and in 1892 to only $666.50, and that respondent and his daughter, Mrs. Etheline Buckner (who are the owners of one-half of Melbourne), are responsible to plaintiff for one-half of said sums; shows that for the years 1891 & 1892

4 there was a kind of verbal understanding between plaintiff and himself, by which respondent should do the best he could with the Morgana plantation, and in consideration of its use should expend $200.00 *dollars* per year in repairs. The place was in a very dilapidated condition and unfit for occupancy and cultivation until repaired.

Respondent, who with his daughter was at that time making large claims against the Morgan succession as heirs and creditors, was anxious to prevent any further destruction of the houses, etc., on said plantation. He made preparation at some expense to make said repairs early in 1891, but the Concord crevasse occurred and totally submerged said place and prevented respondent from cultivating it; hence he did not make the repairs after the water receded. There were a few acres cultivated by respondent's tenants at a heavy loss. It was never contemplated that respondent should pay any money rent for said place, but that he should repair it to the extent of $200.00 and get the benefit of this expenditure from its use.

Being prevented from making said repairs by the overflow aforesaid, he could not get any benefit from said place, and hence does not owe said sum. Said place was again overflowed in 1892 and no crop was made thereon. Now, assuming the part of plaintiff in compensation and reconvention, your respondent shows that he and his daughter Etheline are and have been for many years the owners of one-half of Melbourne plantation aforesaid, and that their title to the same was recognized by final decree of the Supreme Court of the United States in the suit in which plaintiff received his appointment as receiver; shows that, notwithstanding the ownership and quiet possession of your respondent, said plantation was taken from him and his daughter by the United States court in 1885 and placed in the hands of W. S. McMillen, receiver U. S court, and that respondent, in order to obtain possession of his property, was forced to rent it from said W. S. McMillen, receiver, for the sum of $3,000.00 for 1885 and a like sum for 1886; shows that Wm. Grant

5 was appointed receiver, vice W. S. McMillen, in 1886, and all the rent of that year, except $500.00 paid W. S. McMillen, was paid to him, and that respondent continued to rent said place from said Grant at an annual rental of $2,500.00, and to pay the

whole of said rental to him until final decree in the aforesaid suit early in 1891; shows that your respondent paid in this way to said Grant—

In 1886 the sum of			$2,500 00
" 1887	"	"	2,500 00
" 1888	"	"	2,500 00
" 1889	"	"	2,500 00
" 1890	"	"	2,500 00
" 1891	"	"	1,250 00
Making total paid him			$13,750 00

out of which he expended in repairs on said plantation during those years $1,750.00, and in taxes the sum of $2,691.50 *dollars*, leaving a net balance of rent to the credit of the plantation of $9,308.50, one-half of which, or $4,654.25, belong*ing* to your respondent and his daughter and should be refunded to your respondent, who is the sole owner of said rents, having acquired his daughter's interest therein; shows that said sums were paid to said Grant, receiver, under duress of the authority of said United States court and in error, and that he should be required to repay same to your respondent, with legal interest on the respective payments from the dates thereof.

Wherefore, premises considered, your respondent prays that the demands of plaintiff be rejected, except as admitted, and that he have and recover judgment against said Wm. Grant, receiver, in compensation and reconvention in the sum — $4,654.25, with legal interest from dates of payment as above set out, and for general relief.

JOSEPH E. RANSDELL, *Att'y.*

Note of Evidence.

Filed Oct. 19, 1896.

7th District Court, Parish of East Carroll, Louisiana.

WM. GRANT, Receiver,
vs.
JOHN A. BUCKNER.

6 It is admitted by the parties hereto that the amounts of taxes paid on Melbourne by plaintiffs were paid as stated in his deposition on file, and that the Melbourne plantation was worked by defendant in 1892 for a rental of $1,800.00 for that year.

It is admitted that defendant and his daughter, Etheline Buckner, were decreed by the U. S. Supreme Court to be the owners of one-half of Melboune, and that since defendant has acquired all the

claims of his daughter for rents and revenues, as set out in his answer and reconventional demand.

C. S. WYLY,
Att'y for Pl'ff.
JOS. E. RANSDELL,
Att'y for Def't.

Plaintiffs offer- in evidence the lease marked Exhibit B, attached to plaintiff's petition; also the notes C, D, & E, attached to his petition, with endorsements thereon.

Plaintiffs offer- the testimony of Wm. Grant, taken before Frank Reynold, notary public for the parish of Orleans, on the 16th day of March, 1896, together with all the exhibits attached to said depositions.

Also account marked A, annexed to the petition of plaintiff, so far as is proven by the testimony of Wm. Grant.

Plaintiff's Class-in-chief.

JOHN A. BUCKNER, being duly sworn, says I am the defendant in this suit:

Q. Col., William Grant, in his testimony in this case, which has been offered in evidence, shows that you paid to McMillen and himself as rent for Melbourne in 1886 the sum of $2,500.00; that you paid him for said place in 1887 the sum of $2,700.00; that you paid to him in 1888 for said place the sum of $2,249.99; in 1889, the sum of $2,249.99; in 1890, the sum of $1,499.99, and in 1891, the sum of $1,124.99. Now, please state if those are the sums paid by you to Wm. Grant during those years for rent of Melbourne, and, if not, what sums did you pay for those years?

7 Plaintiff's counsel objects to the foregoing question, and to all efforts to prove a claim against the representative of the Morgan estate, as creditor of said estate, on the ground that other creditors are interested in the question that compensation cannot be pleaded by an alleged creditor of the estate in the suit against him and a debt due the estate; that his claims can only be set up by way of opposition to the account of the representative of the estate. Objected to on the further ground that defendant has already set up the claim made in reconvention in the U. S. circuit court for the eastern district of Louisiana, which court has full jurisdiction to pass upon said claim in the *rents* pending therein.

Objection overruled; to which ruling of the court plaintiff's counsel reserves this his bill of exception.

Answer. During the year 1886 I paid $2,700.00 in cash and $300.00 in repairs—be allowed in the terms of the lease to expend that amount for repairs. In 1887 I paid $2,700.00 in cash and $300.00 in repairs under the same terms of lease; in 1888 I paid $2,249.99 in cash and $250.00 in repairs, being allowed that sum under terms of the lease; in 1889 I paid the sum of $2,249.99 in

cash and $250.00 in repairs under the terms of the lease; in 1890 I paid $1,500.00 and one thousand for repairs under the lease. In 1891 the lease was for $2,500.00, $250.00 being allowed for repairs, to be taken from the amount of the lease, leaving a balance of $2,250.00, of which amount I paid ½, or $1,125.00. The reason I only paid one-half in 1891 was that the supreme court decided that I was the owner of one-half of the amounts deducted for repairs for each of the above-mentioned years; was very much less than I actually put on the property. All of these repairs were absolutely necessary to preserve the property.

My understanding about the lease of Morgana in 1891 was: The place was in a very dilapidated condition. The houses were falling down, and there were only two tenants on the property. I proposed to Mr. Grant to take the property and spend $200.00 on it in the way of improvements. I bought saws and other tools for making these improvements; made contract with the parties to get
8 out blocks and shingles. That year the place was overflown and the improvements could not be made. In 1892 the place was partially overflown, but I continued to supply the two families living on the place, and I did not get enough out of the place to pay for supplies I advanced. One of these tenants still owes me $200.00. It was not understood with the receiver that he was to get any money out of it. The amount, $200.00, agreed upon was to go to improve the place and keep it from going to destruction.

Cross-examined:

Q. Was Morgan a plantation worth $200.00 per year as rent for the years 1891 and 1892, at the time you had the understanding with the receiver?

Answer. It might have been worth that amount had it not been overflown. There was nothing said about overflows when I made the agreement with the receiver. I was acting as much in the capacity as agent in keeping the property up as I was lessee.

Q. Did you as agent try to lease the property to any one else?

Answer. Yes; I leased it to two parties that were on the place. There was only 30 or 40 acres that these parties started to work when they were overflowed. I don't remember what they agreed to pay as rent; there was no written agreement.

I had possession of all of Melbourne when the receiver was appointed by the U. S. court. I had possession of it for about 10 or 12 years previous to the appointment of a receiver by the U. S. court. It was a sort of half-way possession, as it was all grown up in weeds and briars and no houses on it. When I took possession there was only one little cabin on it. I collected the rents and revenues of the place prior to the appointment of a receiver. It was overflown many years during this period, and I spent a great deal more money than I got out of it during this 10 or 12 years' occupancy building the place up. It was entirely destroyed during the war; every house was burned, fences were burned, and the ditches were filled up and overgrown with trees.

Q. Did you not set up your claim before the Federal court
9 for improvements on the property as creditor of the estate of O. J. Morgan?

Answer. I don't remember; the case has gone up in so many branches.

It is admitted that the taxes of the Melbourne place in 1886 amounted to $660.95; in 1887, $668.10; in 1888, to $808.10; in 1889, $757.60; in 1890, to $757.60.

Defendant offers certified copies of opinion and decree in suits 6612, 10633, & 10634, in the U. S. court for the eastern district of Louisiana, styled D. C. Mellen, administrator, *vs.* M. F. Johnson *et al.*, John A. Buckner *et al. vs.* D. C. Mellen *et al.*, Narcisse K. Johnson *et al. vs.* D. C. Mellen *et al.*, rendered on April 17, 1895, and May 8th, 1895; received and filed in evidence.

It is agreed that the opinion of the U. S. court in the above-styled cases can be read before the appellate court as if offered in evidence herein from the printed reports of the decision.

The foregoing is all the evidence adduced on trial hereof.

J. D. TOMPKINS.

Document C Offered by Pl'ff.

$833.33. MELBOURNE, LA., *Jan'y 1st*, '91.

On the first day of Nov. next I promise to pay to the order of Wm. Grant, receiver of Morgana estate, eight hundred and thirty-three and $\frac{33}{100}$ dollars for rent of Melbourne plantation for 1891.

JOHN A. BUCKNER.

Document C endorsed:

This note is entitled to a credit of two hundred and fifty dollars for repairs, as per lease. Dec. 16, 1891. Wm. Grant, receiver. Dec. 16, 1891, rec'd on this note $291.66. Filed Nov. 26, 1894. J. M. Hamilton, d'y clerk. Filed in evidence Oct. 19, '96. J. D. Tompkins, clerk.

Document D Offered by Pl'ff.

10 $833.33. MELBOURNE, LA., *Jan. 1st*, '91.

On the 15th day of Nov., 1891, I promise to pay Wm. Grant, receiver of Morgan estate, or order eight hundred and thirty-three & $\frac{33}{100}$ dollars for rent of Melbourne plantation for 1891.

JOHN A. BUCKNER.

Endorsed: Rec'd on this note, $416.66, Dec. 16th, 1891. Filed Nov. 26th, 1894. J. M. Hamilton, d'y clerk. Filed in evidence Oct. 19, '96. J. D. Tompkins, clerk.

Doc't "E" Offered by Pl'ff.

$833.33. MELBOURNE, LA., *Jan. 1st*, 1891.

On the 1st day of Dec., 1891, I promise to pay to the order of

Wm. Grant, receiver of Morgan estate, eight hundred and thirty-three & $\frac{33}{100}$ — for rent of Melbourne plantation for 1891.

JOHN A. BUCKNER.

Endorsed: Rec'd on this note, $416.66, Dec. 16, 1891. Filed Nov. 26, 1894. J. M. Hamilton, d'y clerk. Filed in evidence Oct. 19, 1896. J. D. Tompkins, clerk.

Document A Offered by Pl'ff.

John A. Buckner to Wm. Grant, receiver, Dr.

1892.			
Jan'y 1st.	½ taxes for 1891 on Melbourne plantation.....		430 60
Jan'y 1.	Rent of ½ of Melbourne for 1892..		1,250 00
" "	½ taxes Melbourne " "		445 35
1892.			
Jan'y 1.	Rent for Morgana for 1891.....		200 00
" " " " " "	1892..... ...		200 00
			$2,625 95

Endorsed: Filed Nov. 26, 1894. J. M. Hamilton, d'y clerk. Filed in evidence Oct. 19, '96. J. D. Tompkins, clerk.

11

7th Dist. Court, Parish of East Carroll, Louisiana.

WM. GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 312.

Interrogatories to be propounded to Wm. Grant, a necessary and material witness in behalf of plaintiff, who answers thereto, when taken under oath before any competent officer, will be read in evidence on trial of the above-styled suit in behalf of plaintiff.

Interrogatory 1st. Please state your name, age, *residence*, and place of residence, and also what connection, if any, you have with the above-styled suit.

2nd. The above suit claims from the defendant the above sums, to wit, one-half taxes on Melbourne plantation for 1891, $430.60; one-half rent of same for 1892, $1,250.00; one-half taxes for 1892, 445.35; rents on Morgana for 1891 & 1892, $400.00, aggregating $2,525.95, on the ground that defendant leased from plaintiff for 1891 said Melbourne plantation at a rental of $2,500.00; that said lease was tacitly renewed for 1892; that defendant, having been adjudged the owner of one-half said plantation about March, 1891, paid plaintiff one-half the rent on same for 1891, but failed to pay him one-half the taxes thereon paid by plaintiff and due by defendant by way of contribution; that defendant owes plaintiff for one-half the rents on said place for 1892 and also for one-half the taxes thereon paid by plaintiff, and that defendant leased from plaintiff

by verbal contract the Morgana plantation for 1891 & 1892 at a yearly rental of two hundred dollars, which he has never paid. Defendant admits that he leased Melbourne plantation for 1891 at $2,500.00; that he is liable to plaintiff for one-half the taxes for 1891 & 1892, but claims that the lease of Melbourne plantation was not tacitly renewed, but that he leased said place for 1892 by verbal contract with plaintiff, on the basis of $1,800.00 for the whole
12 place, and that the taxes for 1891 amounted only to $525.00, and in 1892 only to $666.50.

Defendant also claims that it was never contemplated that he should pay any money rent for Morgana plant, but that he should repair it to the extent of $200.00 and get the benefit of his expenditure from its use; that, being prevented by overflow from making said repairs, he could not get any benefit from said place, and hence does not owe the rent. Defendant further claims that during the years 1886 to 1891, inclusive, he paid to you, as receiver of the estate of O. J. Morgan, an aggregate sum of $13,750.00 as rental for the Melbourne plant, out of which you expended for repairs during these years $1,750.00, and for taxes $2,691.50, leaving a net balance of rent to the credit of said plantation of $9,308.50, for ½ of which he asks judgment against you in reconvention.

Now, please state what were the amount of taxes for 1891 & 1892 paid by you on Melbourne plant as a whole and how you arrive at the amounts due by defendant. If you have made such payments, and if you have the tax receipts therefor, annex same to your answers. Answer fully.

Interrogatory 3rd. Under what contract, if any, did defendant cultivate Melbourne plant in 1891, and under what contract, if any, did he cultivate it in 1892?

— 4th. If you say that Exhibit "B," annexed by you to your petition in this case, was the contract for 1891, please state whether or not there was any change or modification of this contract for 1892. Was there any contract, verbal or otherwise, whereby defendant was to pay rent for 1892 on the basis of only $1,800.00 for the whole of Melbourne plant? Explain fully.

Interrogatory 5th. Did defendant occupy and cultivate said Melbourne plant during the year 1892? Did you take any steps within one month after Dec. 31st, 1891, to cause him to deliver up
13 the possession of said plantation as lessee thereof? Answer fully.

6th. Until what date did you as receiver of the Morgan property, including Melbourne plantation, under appointment of the U. S. circuit court, have possession and control of said property? Explain fully.

7th. Have you accounted to the U. S. circuit court as receiver for rents and revenues of the said property received by you? If so, was defendant Buckner a party to the proceedings in said — whereby you rendered such account? Explain fully.

8th. Are you indebted to Jno. A. Buckner or his daughter for any part of $9,308.50 or the ½ thereof, $4,654.25, claimed in reconvention? If not, state fully why so.

9th Int. Explain fully your claim of rent for the Morgana plantation for the years 1891 & 1892.

10th Int. State any other matter or thing that may be of advantage to plaintiff herein as if specially interrogated in reference thereto. Explain same fully in your answer.

C. S. WYLY, *Att'y.*

To the hon. the judge of said court:

The petition of plaintiff in the above-styled suit with respect shows that the testimony of the above-named witness, William Grant, residing in the parish of Orleans, La., in answer to the foregoing interrogatory- is necessary and material to plaintiff in said suit, and that he cannot safely go to trial without said testimony.

Wherefore he prays for all order directing a commission to issue to any competent officer in the parish of Orleans, La., requiring said officer to take the testimony of said witness in answer to said interrogatories and make return of said commission, with the 14 answers of said witness annexed, to your said court in the delays fixed. He prays for all necessary orders, for costs, and general relief.

C. S. WYLY, *Att'y.*

The foregoing petition and annexed interrogatories considered, it is ordered that a commission to take testimony issue to any notary public in and for the parish of Orleans, La., authorizing and requiring him to take the answers of the witness, Wm. Grant, residing in said parish, to the foregoing interrogatories as may be filed within legal delay and make return of said commission, with the answers of said witness, under seal, to J. D. Tompkins, clerk of our said court, at Lake Providence, La., on or before the 18th day of March, A. D. 1896.

Read and signed on this — day of March, A. D. 1896.

—— ——.

Service of interrogatories accepted and all delays waived this — day of March, 1896. Commission waived and counsel granted that the foregoing interrogatories attached herein may be answered before any officer having a seal.

JOS. E. RANSDELL,
Att'y for Jno. A. Buckner.

Cross-interrogatories.

7th Dist. Court for East Carroll Parish, La.

WM. GRANT, Receiver,
vs.
JNO. A. BUCKNER. } No. 312.

Cross-int-. to Wm. Grant.

1st interrogatory. Is it not a fact that you had a verbal agreement with Jno. A. Buckner early in 1892 that he should occupy the

whole of Melbourne during the year 1892 on a basis of $1,800.00 for the rental thereof? If you answer nay, state whether or not anything was said by you or by him concerning the rent of said place for $1,800.00; and, if so, state what.

Int. 2nd. If you say in answer to interrogatory 9th that
15 John A. Buckner leased the Morgana plantation for 1891 & 1892, state all the terms and conditions of said lease fully, especially the agreement concerning improvements thereon. Is it not a fact that you and Jno. A. Buckner had a mere verbal agreement about Morgana, the substance of which was that he should look after the property and keep it from going to destruction, and that no moneyed rent was to be extracted of him, but he was to expend $200.00 per annum in repairs, provided he used the property?

Int. 3rd. If you say in answer to interrogatory 7th that you have accounted to the United States court as receiver for the rents and revenues of the Morgan estate received by you; that Jno. A. Buckner was a party to the proceedings, please annex to your answer a certified copy from the clerk of said court of your accounts in said court which show said facts; also certified copy in full of every account filed by you as receiver of the Morgan estate; also a certified copy of the pleadings of Jno. A. Buckner making himself a party to your accounts aforesaid or the proceedings relative to same.

Int. 4th. State what sums, if any, you now hold belonging to the Morgan estate and what sums, if any, are due to you as receiver of said estate and by whom due.

JOS. E. RANSDELL,
Att'y for John A. Buckner.

Testimony — Wm. Grant.

Seventh District Court, Parish of East Carroll.

WILLIAM GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 312.

The answers of William Grant to the interrogatories and cross-interrogatories propounded to him in said cause are hereto annexed:

To the first interrogatory he says: My name is William Grant; age, 57; occupation, lawyer; residence, New Orleans. I am plaintiff in the case in my capacity as receiver of the estate of
16 Oliver J. Morgan, by appointment of the circuit court of the United States *circuit court* for the eastern district of Louisiana in a cause therein pending, entitled Stephen Waters, administrator, *versus* M. F. Johnson and others, No. 6612 on the docket.

To the second interrogatory he says: The estate of Morgan, which came into my hands, consisted of the following plantations and tracts of land: Westland, Morgana, Wilton, Albion, Melbourne, and Sasmill tract. These properties were specially assessed up to and including 1889, and the Melbourne was assessed at a valuation of $25,250 for 1888 and 1889. After 1889 the lands were assessed *en*

bloc at a gross valuation of $65,000 each year, and I paid taxes on the whole property, amounting to $2,227.23 for 1891 and $2,292.89 for 1892. The rate of taxation for 1891 was 22 mills and for 1892 23 mills, besides which the property was assessed acreage tax of five cents per acre. Inasmuch as there was no separate assessment for 1891 and 1892, I take the assessments for 1888 and 1889 as representing the relative value of the Melbourne plantation for the purposes of taxation in 1891 and 1892. On this basis the Melbourne plantation was charged with taxes as follows:

For 1891, State, parish, and levee tax (at 22 mills on the valuation, $25,250)	$555 50
The acreage tax on 4,042 acres at five cents per acre is	202 10
Making the tax on the plantation for 1891	757 60

EXHIBIT "A."

NEW ORLEANS, LA., *January 11th*, 1892.

DEAR COLONEL: The parties in interest delay me in writing by an attempt to obtain the consent of creditors and take the estate out of court. This has failed, and I can therefore now act. I accept your offer for Morgana for 1892 as made in your favor of the 7th. I do not now accept your offer for Melbourne, but offer instead to lease you Morgana and Melbourne together for $2,400.00 and allow $500.00 for repairs. I don't like to reduce the rent; nevertheless, I am inclined to meet you half way by increasing the allowances. I'll see Mr. Beckwith as to the form of the lease when the terms are settled. I wish you would instruct Mr. Beckwith to present *to* petition for reduction of rent on Morgana for the year 1891 and for adjustment of the ½ of the Melbourne rent you have retained. I am embarrassed as things now stand in making my annual accounts. The matter shall be ready for hearing when you come to the city next month.

17

Yours sincerely,

(Signed) WM. GRANT, *Receiver.*

No. 394, Ward.

Taxes, 1891.

STATE OF LOUISIANA.

STATE OF LOUISIANA, PARISH OF EAST CARROLL.

Received of O. J. Morgan estate—

State tax	393 84
Parish tax	393 84
Levee tax	656 40
" " land district	783 15
Total	$2,227 23

twenty-two hundred and twenty-seven dollars & $\frac{23}{100}$ dollars, amount of taxes as itemized for the year 1891 on property described on reverse here in accordance with law.

J. C. BASS,
P'r BELL,
Sheriff & ex Officio Tax Collector, East Carroll Parish.

No. 81, Ward.

Taxes, 1892.

STATE OF LOUISIANA, PARISH OF EAST CARROLL,
Dec. 16th, 1892.

Received of Wm. Grant, receiver of estate O. J. Morgan—

State tax	393 84
Parish tax	459 84
Levee tax	656 40
Levee tax land, 5c. acre	783 15
Total	$2,292 87

two thousand and two hundred and ninety-two & $\frac{87}{100}$ dollars,
18 amount of taxes as itemized for the year 1892 on property described on reverse hereof in accordance with law.

J. W. DUNN,
Sheriff & ex Officio Tax Collector, East Carroll Parish.

Saw-mill tract, 640 acres	$640 00
Westland, Melbourne, Morgana, Wilton, and Albion, 15,023 acres	65,000 00
For 1892, State, parish, and levee district taxes on the valuation of $22,550, at 23 mills, is	$580 75
The acreage tax is	202 10
Making a total of for the year 1892.	$782 85
The defendant, Colonel Buckner, owes one-half of the taxes for 1891, which is	$370 80
And on- half the taxes of 1892, which is	391 47

My former estimate of the proportion of these taxes due by Colonel Buckner exceeded these amounts, because I erroneously charged the Melbourne plantation with a *pro rata* of the whole tax, including the acreage tax, based upon its value, when I should have prorated the State, parish, and levee taxes according to the value and charged the acreage tax separately. I annex hereto the receipts for the taxes of 1891 and 1892 paid by me.

To the third interrogatory he says: The defendant cultivated the Melbourne plantation in 1891, under the lease annexed to the peti-

tion in this case as Exhibit " B," dated January 1st, 1891. He continued in the possession and cultivation of the plantation in 1892 under a new lease made by verbal agreement.

To the fourth interrogatory he says: Some time in the latter part of the year 1891 negotiations took place between myself and the defendant for the renewal of the lease of the Morgana and the Melbourne plantations. Those negotiations were followed by a letter from Colonel Buckner, dated December 7th, 1891, which I
19 have lost or mislaid and cannot find after a most diligent search among the papers and files in my office, and can only say that it contained an offer for the lease of the Melbourne and Morgana places without being able to give the terms of the offer. I, however, wrote a letter in reply under date of January 11th, 1892, a copy of which I annex to my deposition, marked Exhibit "A." Colonel Buckner has, no doubt, a copy of his letter to me of December 7th, and it will show what offer was made in connection with my proposal of January 11th. However this may be, Colonel Buckner afterwards visited New Orleans, and I then agreed with him verbally to lease the Melbourne plantation for 1892 for a cash rental of $1,800.

To the fifth interrogatory he says: My answer to the fourth interrogatory covers this question.

To the sixth interrogatory he says: I was appointed receiver and took possession of the Morgan estate on June 15th, 1886, and retained possession of the whole properties, including the Melbourne, until the 5th March, 1892, when Colonel Buckner and his daughter were recognized as owners of one-half of the Melbourne plantation and let into possession of that interest under a decree of the circuit court of the United States, a copy of which is annexed to this deposition, and I remained in possession of the other one-half until it was sold by order of the circuit court.

To the seventh interrogatory he says: I have accounted to the circuit court of the United States, which appointed me receiver, annually. The defendant Bucker was a party to the cause in which I was appointed, having represented his daughter in the original suit and having subsequently come in for relief as to his own interest.

To the eighth interrogatory he says: I am not indebted to the defendant for $4,654.25, as claimed by him on account of revenues collected from the Melbourne plantation, or in any sum whatever. In the first place, I could not, as receiver, contract any such liability without the authority of the court appointing me, nor could I dispose of any funds which came into my hands by any act of
20 my own, and no authority has been given me in this instance; second, I have been and am simply the hand of the court in leasing said property, and I have collected the revenues for the court and they have always been held by me for the court, solely subject to its order; third, I have expended under the authority of the court, in the administration of the property, for taxes, repairs, insurance, and costs and in payment of my own salary, as allowed by the court in the order appointing me, an amount greatly in excess

of all sums of money received by me from the rents or from any other source, as will appear from my accounts rendered to the court during the period of my administration. Certified copies of those accounts are hereto annexed, marked Exhibits "B, C, D, E, F, & G," respectively. Those accounts have been duly approved by the court in the form and manner required by the rules of practice.

To the ninth interrogatory he says: The Morgana property was leased by me to the defendant, Colonel Buckner, by verbal agreement, for the year 1891, at a rental of $200, which Colonel Buckner agreed to spend in improvements on the property. He has neither paid the rental in money nor expended the amount in repairs and improvements, claiming that he should be relieved from his obligation on account of the overflow of that year. I could not, as receiver, release him from his obligation. I, however, advised him in a friendly way to apply to the circuit court for such relief as he desired. This he has never done and I consider that he owes the rent for that year and should pay in cash. As to the terms of the lease for the Morgana for 1892, my distinct recollection is that he was to pay a rental of $200, to be expended in improvements and repairs on the property, his obligation not being made dependent upon the fact whether he should or should not choose to cultivate the property. As he has neither paid the rental in cash or made the repairs and improvements, I consider that he owes the rent for 1892 and should pay the same in cash.

To the tenth interrogatory he says: The suit No. 6612, in which I was appointed receiver, was — originally by William Gay, a creditor of the succession of Oliver J. Morgan, for himself and in behalf of other creditors similarly situated, against M. F. Johnson, John A. Buckner, tutor, and others, for the purpose of setting aside the sale of the plantations, including the Melbourne, sold in the succession of Morgan, and to subject them to the payment of the claims of the creditors. Upon the death of William Gay, Stephen Waters was appointed administrator of the succession, and he was substituted as plaintiff in the cause. Subsequently, Mellen was appointed administrator of the succession of Waters on his decease. The cause progressed to a decree in the circuit court of the United States in favor of Waters, was appealed to the Supreme Court of the United States, and the case is reported under the title of Johnson *versus* Waters, administrator, 111 U. S., 657. When the mandate came down from the supreme court W. S. McMillen was appointed receiver, and upon his resignation I was appointed to succeed him, as will appear from a copy of the order of appointment, annexed to this deposition. Colonel Buckner thereupon filed an auxiliary bill in the circuit court of the United States in the nature of a cross-bill in his own behalf and that of his daughter, setting up title to the Melbourne plantation. This auxiliary bill was docketed under the number 10633. Narcisse K. Keene and Julia H. Morgan filed a similar auxiliary bill for relief, under the number 10634. After that these auxiliary bills were tried as part of the cause No. 6612, and have since then been treated as a consolidated cause. Colonel Buckner obtained a decree in the con-

solidated cause upon his auxiliary bill favorable to his views, but an appeal was taken therefrom by Mellen, administrator, to the Supreme Court of the United States, which then readjusted the equities of the parties and directed that Colonel Buckner and his daughter be recognized as owners of one-half of the Melbourne plantation, but he was not decreed to be entitled to the revenues of the property. This case is fully reported in Mellen *vs.* Buckner, 139 U. S., 388. When the mandate of the Supreme Court came down a decree was entered by the circuit court on the 5th day of March, 1892, recognizing the defendant and his
22 daughter to be entitled to one-half of Melbourne plantation and directing that they be put in possession. The court also directed me to file an account with a view to my discharge, reserving the question of costs and the disposition of the accounts of the receiver for future adjudication, but no rents were awarded to Colonel Buckner and his daughter. All this will appear from a certified copy of the decree, hereto annexed, marked Exhibit F. Subsequently the one-half interest of Colonel Buckner and his daughter was set off to them, and their right to one-half revenues, as owned since the date of that decree, for the years 1891 and 1892 and since has been recognized, Colonel Buckner giving credit for the rent for these years as owners of one-half of the property, subject, however, to the obligation of paying one-half of the taxes for these years, which I had discharged. On the 1st April, 1893, Colonel Buckner filed a petition in the consolidated causes praying for an account of the rents collected by the receiver since his appointment and for a decree that he pay back one-half of the rents collected for the years prior to 1891. A copy of this petition is annexed hereto, marked Exhibit I. This petition was referred to me, as receiver, with directions to report the facts required for its consideration. In compliance with the order, I filed the annexed account, marked "No. 6," on the 7th April, 1893. On the 25th of the same month I filed the report annexed to this deposition, marked Exhibit J. This petition is still pending and has not yet been brought to a hearing. As the question raised by the defendant's claim in reconvention in the suit concerns the parties to the consolidated cause and the disposition of the funds in my hands, in which they have an interest, and as the questions are pending in the circuit court, where they should be properly decided, I do not consider myself amenable to the jurisdiction of the State court under the rule of comity prevailing between State and Federal tribunals.

Answers to Cross-interrogatories.

To the first cross-interrogatory he says: The negotiations between myself and Colonel Buckner resulted in a verbal agreement
23 for the lease of the Melbourne plantation at a rental of $1,800 for the year 1892.

To the second cross-interrogatory he says: I leased the Morgana

property to the defendant for the year 1891 at a rental of $200, which he was to expend in repairs and improvements. He made no repairs and has not paid the rent in cash, but has claimed that he was relieved from his obligation on account of the overflow of that year. As already stated, I had no authority to relieve him from the payment of the rent, and advised him in a friendly way to apply to the court for relief. This he has not done, and therefore owes the amount in cash. As to the agreement for the lease of the Morgana in 1892, I refer to my reply to the ninth interrogatory for answer, but my distinct recollection is that he was to make improvements during that year to the amount of $200 or pay that amount in cash. This agreement was not made to depend upon the fact whether he chose to occupy the place or not and cultivate it or not, and he has neither made the improvements and repairs nor paid the rent, and I consider that he still owes it.

To the third cross-interrogatory he says: A. I have accounted to the court for all the rents collected from the estate of Morgan, including the revenues from the Melbourne plantation, and annex a certified copy of my accounts to my deposition. These accounts when filed were notified in the chancery order book of the circuit court of the United States, in accordance with the rules of practice in such cases. In each instance the accounts were referred to A. G. Brice, Esqr., master in the cause, who made reports approving the same. Notices of the filing of these reports were also entered in the chancery order book, and no exception having been filed within thirty days thereafter, the accounts stood approved by force of equity rule No. 83, governing the practice in chancery in the circuit court of the United States. Notices entered in the order book are considered notices to all parties to an equity cause. I have annexed a copy of the decree of March 5th, 1892, in the consolidated
24 cause in my answer to the direct interrogatory No. 10, through which the defendant claims title to one-half the Melbourne plantation. That shows that he was a party to the cause, and thus a party to my accounts. I have also annexed to my answer to the last direct interrogatory a copy of the petition of Colonel Buckner filed April 1st, 1893, in compliance with which my last account, No. 6, was filed. He had notice of its filing through the order book, and not having excepted to it, the account stands approved also under the rule 83.

To the fourth cross-interrogatory he says: There was a balance due me, as receiver of the estate of Morgan, at the date of filing my last account, No. 6, on the 7th April, 1893, amounting to $4,699.05, as appears from that account. I have since received $1,560.00, in part payment of the balance then due me, from the proceeds of the sale of other property of the estate. There remains a large amount of costs and attorneys' fees still due outside of my own claim, and the only asset remaining is the present claim against the defendant Buckner.

WILLIAM GRANT.

Sworn to and subscribed before me this 16th day of March, 1896.

FRANK E. RAINOLD,
Notary Public.

United States Circuit Court, Eastern District of Louisiana.

ISRAEL WATERS, Adm'r,
vs.
M. F. JOHNSON *et als.*
No. 6612.

W. S. McMillen, Esqr., having resigned the office of receiver in this cause, and the condition of the property in litigation requiring the trust to be continued—

William Grant, Esqr., is hereby appointed receiver of the estate and succession of Oliver J. Morgan in his stead, with the usual powers of receivers, including the authority to get in and collect, by suit or otherwise, all claims, debts, or property due or owned by such estate, to take possession of the real estate belonging
25 thereto, and to lease the same and collect the rents due therefrom, and to do all things necessary to preserve and administer the property of said estate.

The receiver, before entering upon his duties, shall take the usual oath and execute a bond, with solvent surety, before A. G. Brice, Esqr., master, and with his approval, in the sum of ten thousand dollars, with the usual conditions for the faithful performance of his duties.

The receiver's salary as manager of the plantations to be administered is fixed at two thousand dollars a year.

(Signed) DON A. PARDEE, *Judge.*

Dated June 15th, 1886.

EXHIBIT H.

(Copy.)

Circuit Court of the United States, Eastern District of Louisiana.
In Equity.

JOHN A. BUCKNER, for Himself and as Tutor of Etheline Buckner, His Daughter,
vs.
STEVENSON WATERS, Administrator of the Estate of William Gay; Delos C. Mellen, Administrator *de bonis non*, Substituted, } No. 10633.

and

NARCISSE K. KEENE, Wife of Mathew F. Johnson, and Julia H. Morgan, Wife of George G. Johnson, and Their Husbands
vs.
STEVENSON WATERS, Administrator of the Estate of William Gay; D. C. Mellen, Administrator *de bonis non*, Substituted, } No. 10634.

and

WILLIAM GAY; Delos C. Mellen, Administrator of the Estate of the said William Gay, Deceased,
vs.
26 MATHEW F. JOHNSON, Dative Testamentary Executor of Oliver J. Morgan, *et als.* } No. 6612.

Of the docket of this court, consolidated together as one cause.

The mandate of the supreme court having been filed in these consolidated causes—

It is now ordered, adjudged, and decreed, in conformity with the direction of said mandate, that the decree heretofore rendered in these consolidated causes be set aside and annulled; and—

It is ordered and decreed as a new decree in this cause and by way of supplement to the decree in the principal case of William Gay, administrator, against Mathew F. Johnson, dative testamentary executor of Oliver J. Morgan, and others, No. 6612 on the docket of this court, that the bills filed in these consolidated causes by the complainants be retained and the cases consolidated with said principal case, No. 6612, and that all the relief prayed for in and by the bills of complaint and filed in these consolidated causes be denied, except as herein declared, namely: It is ordered, adjudged, and decreed that instead of reserving to the complainants in these consolidated causes the right to go before the master in said suit No. 6612 to prove their claims against the estate of said Oliver J. Morgan, deceased, for any supposed indebtedness to them as heirs of Narcisse Deeson the said claims are hereby declared satisfied and

paid and in place of said supposed claims the said heirs are entitled to have and retain a certain portion of said Oliver J. Morgan's estate, free from the claims of his creditors, as follows, to wit: ⅔ of the four (4) plantations, "Albion," "Wilton," "Westland," and "Morgana," are directed and decreed to be reserved for the benefit of the heirs of Julia Morgan, deceased, to wit, the complainant, Narcisse Keene, wife of Mathew F. Johnson, aforesaid, and George G. Johnson, universal legatee of his deceased wife, Julia H. Morgan, and one-half (½) of Melbourne plantation is directed and decreed to be reserved for the benefit of the heirs of Oliver H. Kellam, deceased, to wit, the com-
27 plainant, John A. Buckner, and his daughter, Etheline, and that the remaining interest in said plantations are hereby adjudged and decreed to be subject to the payment and satisfaction of the debts due to the administrator of said William Gay, deceased, and to the other creditors of Oliver J. Morgan, deceased, who shall have established their debts before the master in said suit No. 6612, not including the complainants in those consolidated causes; and inasmuch as the aforesaid heirs of Julia Morgan do not desire their share of said plantations, "Albion," "Wilton," "Westlans," and "Morgana" [illegible] to them in severalty, but that the same be sold, it is ordered, adjudged, and decreed that the four (4) plantations aforesaid be sold by Delos C. Mellen, as special commissioner, at public auction, to the highest bidder, without appraisement, for cash, in front of the custom-house, in the city of New Orleans, after thirty days' advertisement in a daily newspaper published in said city of New Orleans, and the proceeds of sale be divided between the complainants, Narcisse Keene and George G. Johnson, and the said creditors of Oliver J. Morgan, deceased, in the following proportions, to wit, two-fifths (⅖) to the said complainant, Narcisse Keene, wife of Mathew F. Johnson, and said George G. Johnson, and ⅗ to the creditors aforesaid of Oliver J. Morgan, deceased.

And further considering the pleadings, issues, admissions, and proofs on the record, and to carry out the said mandate of the said Supreme Court and give effect thereto, it is ordered, adjudged, and decreed that the said Melbourne plantation referred to in said decree of the Supreme Court consists of the lands of which the said Oliver J. Morgan di-d seize-, not included and described in the deed of gift of the said Oliver J. Morgan to Julia Morgan, of the date March 9th, 1858, filed as exhibit to the answer; F. M. Goodrich, defendant in the case; Stevenson Waters, administrator of the succession of William Gay, deceased, *vs.* Mathew F. Johnson, executor of the estate of Oliver J. Morgan *et al.*, No. 6612 of the docket, consolidated in this cause—that is to say, the following-
described real estate, situated in the parish of East Carroll, in
28 the State of Louisiana, to wit: Lots numbered eleven (11) and twelve (12), in township nineteen (19) north of range (13) east, with the double concession to Oliver H. Kellam, numbered twelve (12), and to Thomas McDonald, being numbered thirty-nine (39), in township 19 north of range twelve (12) east, part of said concessions to McDonald extending into township nineteen (19)

north of range thirteen (13) east, as shown by the record of the survey and subdivision of said lands by the United States survey and as delineated in the record of said public survey, the said concession last named being the double back concession made to front lots numbered thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), in township numbered nineteen (19) north of range number thirteen (13) east, the said back concession- numbered twelve (12) and thirty-nine (39), and also front lots eleven (11) and twelve (12), above described, being the property especially excepted from the sale on donation to Julia Morgan of March 9th, 1858, specially referred to in the bill of complainant of Narcisse K. Keene, wife of Mathew F. Johnson, and Julia H. Morgan, wife of George G. Johnson, No. 10634 of the consolidated causes; fractional section numbered thirteen (13), in township number nineteen (19) north of range twelve (12) east; section fourteen (14), in township numbered nineteen (19) north of range twelve (12) east; the east half of section number fifteen (15); the east half of section number twenty-two (22); section number twenty-three (23); fractional section number twenty-four (24), all in township number nineteen (19) north of range twelve (12) east, all of which fully and at large appears in the attested copy of the United States public land survey, filed with this decree and made of record in this cause, marked decree "A," the land adjudged to be the said Melbourne plantation being tinted green on said copy of said Government survey so made a part of this decree.

And the said above-described property is decreed to be the joint property of the said John A. Buckner and his daughter, Etheline Buckner, complainants in the bill of complaint No. 10633, consolidated causes, and the succession of Oliver J. Morgan in the shares of one-half thereof in indivision of the said John A. Buckner and the said Etheline Buckner; the said John A. Buckner and the said Etheline Buckner to take and hold their said one-half in indivision as between themselves in such proportion as they are entitled thereto as heirs of the said Oliver J. Morgan and the said Narcisse Deeson, and the remaining half of said property is the property of the said succession of the said Oliver J. Morgan and subject to the payment of the debts of the said Oliver J. Morgan, deceased, and the succession of the said Oliver J. Morgan is decreed in this cause, the same being decreed in common title in the said proportions and in indivision. The said John A. Buckner and the said Etheline Buckner having filed in the record, through their solicitor, their election to take their share and proportion of the said property constituting the said "Melbourne plantation" in kind, praying that their share thereof be set aside to them, and that there be a partition of the property as authorized by the decree and mandate of the Supreme Court herein, so that the said John A. Buckner and the said Etheline Buckner shall hold one-half thereof in indivision as between themselves and in division from the said property of the said succession of Oliver J. Morgan, subjected to the rights of the said creditors by the decree herein; and the said John A. Buckner and the said Etheline Buckner, his daughter, having elected to take

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and receive their said share of the said property in kind with partition thereof, it is ordered and decreed that the same be divided and the share of the said John A. Buckner and the said Etheline Buckner in said property be set apart to them by partition on the said John A. Buckner and the said Etheline Buckner having the right decreed to them in the mandate of the Supreme Court herein to select such buildings erected by them or either of them as they may desire to include within the share to be set aside to them; and if it shall appear that the said partition cannot amicably be made between the parties thereto or their solicitors by consent, then the said parties hereto are authorized to apply to the court for the
30 appointment of commission-s to make said partition, and the decree herein is left open in that respect and particular for all necessary order or proceedings that may become necessary as expedient to effect a partition of the said property, the said Melbourne plantation, as provided in the mandate of the Supreme Court and in this decree, and they or any of them are allowed in said written election to designate any buildings that have been erected by them on said lands in which they are respectively decreed to have interest and title by this decree and which they desire to retain, and the partition and setting off to them of the said estate and lands shall be so made as to include such building or buildings on the land so set apart to them, and the boundary line of division shall be so run and located in such partition and allotment so as to include said building or buildings in the share or estate set apart to them, if it can be done without prejudice to the balance of said estate set apart for the satisfaction of creditors or to the injury or prejudice of the portion so set apart to the said heirs; and in such partition the value of such building or buildings so selected shall not be included in the valuation of the lands set off to them in making such partition nor charged to the said heirs in the valuation of the portion set off to them, including the *sight* of such building or buildings, and if such partition can be made amicably between the parties and the solicitors of the creditors and the said heirs respectively, then they or any of them in respect of this interest in said lands shall so report to the court, and the court will in such cases make such decree in respect thereto as shall be necessary to confirm said partition and setting off; but if such partition cannot be made amicably, and the fact is so reported to the court, as to the said heirs or any of them, then the court will make such order and decree in respect thereto as shall constitute and appoint commissioners and provide proper steps and proceedings to make such partition and allotment in kind as provided in the decree of the supreme court herein. And it is further ordered and decreed
31 that all the rest and residue of the lands belonging to Oliver J. Morgan, deceased, at the time of his death constitute the four (4) plantations, "Albion," "Wilton," "Westland," and "Morgan," hereinbefore reserved, two-fifths ($\frac{2}{5}$) to the heirs of Julia Morgan aforesaid, and three-fifths ($\frac{3}{5}$) to the creditors aforesaid of Oliver J. Morgan, deceased, and are composed of the following lands, to wit: Lots four (4), five (5), six (6), seven (7), eight (8), nine (9), and ten

(10), in township nineteen (19) north, range thirteen (13) east; section- 2, eleven (11), thirty-seven (37), three (3), four (4), five (5), and ten (10) and east half of east half (E. ½ of E. ½) of section six (6), and east half of northwest quarter (E. ½ of N. W. ¼) of section seven (7), and north half (N. ½) and southeast quarter (S. E. ¼) of section nine (9), all in township nineteen (19) north, range twelve (12) east, and also east half of east half (E. ½ of E. ½) of section thirty-three (33), in township nineteen (19) north, range twelve (12) east, and east half of east half (E. ½ of E. ½), section four (4), and east half (E. ½) of section nine (9), in township eighteen (18) north, range twelve (12) east, and section- nineteen (19), twenty (20), twenty-nine (29), thirty (30), thirty-two (32), thirty-three (33), thirty-four (34), and thirty-five (35), and the west half and northeast quarter (W. ½ and N. E. ¼) of section twenty-seven (27), and southwest quarter (S. W. ¼) and west half (W. ½) of northwest quarter (N. W. ¼) of section twenty-eight (28), all in township twenty (20) north, range twelve (12) east.

It is further ordered, adjudged, and decreed that the undivided half (½) interest of the creditors aforesaid in said Melbourne plantation be sold by the said Delos C. Mellen, as special commissioner, at the same time and place, in the same manner, on the same terms, and after the same advertisement as are hereinbefore prescribed for the sale of the aforesaid four (4) plantations called "Albion," "Wilton," "Westland," and "Morgana."

It is further ordered and decreed that said sale of said undivided half (½) interest of said "Melbourne" plantation shall in no
32 manner interfere with or impede or delay the complainants John A. Buckner and his daughter Etheline in their proceedings to have set off to them one-half (½) of said Melbourne plantation in severalty.

It is further ordered and decreed that the complainants in these consolidated causes and defendants therein pay their own costs of appeal, except the cost of printing the record of appeal, which is to be equally divided between them, and that the costs of these consolidated causes incurred in the court up to the time of the rendation of the decree of the Supreme Court be paid by the complainants in each cause respectively.

It is further ordered and decreed that as soon as the sale of the lands aforesaid shall be made and completed the receiver shall deliver possession thereof to the purchasers, and as to the undivided half (½) of said Melbourne plantation he shall deliver possession thereof to the purchaser and the remaining half (½) to the complainants John A. Buckner and his daughter Etheline, if at that time the said plantation be undivided, and if divided he shall deliver to the purchaser in severalty his half (½) of said plantation, and the other half (½) to said complainants, John A. Buckner and his daughter Etheline, subject to the rights of lessees for the year to occupy and cultivate the same for the year 1892.

It is further ordered that as soon as delivery of possession is made by the receiver, as aforesaid, he shall file an account with a view to his discharge, and all question- of settlement not herein provided for and of the accounts of the receiver are reserved for such further

order and decree as may be necessary in that behalf, or to adjust the rights of all parties concerning any rents or revenues of said property that have accrued since the appointment of the receiver herein.

Done the 5th day of March, A. D. 1892.

(Signed) DON A. PARDEE,
Circuit Judge.

Entered March 5th, 1892.

(Signed) H. J. CARTER,
Deputy Clerk.

33 EXHIBIT "D."

Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

JOHN A. BUCKNER, for Himself and as a Tutor of Etheline Buckner, His Daughter,
vs.
STEVENSON WATERS, Administrator of the Estate of William Gay; Delos C. Mellen, Administrator *de bonis non*, Substituted. } No. 10633.

NARCISSE K. KEENE, Wife of Mathew F. Johnson, and Julia H. Morgan, Wife of George G. Johnson, and Their Husbands
vs.
STEVENSON WATERS, Administrator of the Estate of William Gay; Delos C. Mellen, Administrator *de bonis non*, Substituted. } No. 10634.

WILLIAM GAY; DELOS C. MELLEN, Administrator of the Estate of the said William Gay, Deceased,
vs.
MATHEW F. JOHNSON, Dative Testamentary Executor of Oliver Morgan, *et al.* } No. 6612.

Of the docket of this court, consolidated as one cause.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

The petition of John A. Buckner respectfully represents — your honors that, referring at all times to the record of this cause as consolidated, it appears that after mandate of the Supreme Court, on the full determination of this cause, came back to this court, avoiding and setting aside the sale of the Melbourne plantation under
34 the judgment of the State probate court, this honorable court took possession of all of the said plantation through a receiver, taking the same entirely from the possession of the petitioner and putting the same in the possession of William Grant, Esq., receiver, at the date as shown by record herein; that from the date of such dispossession your petitioner has been compelled to rent the entire plantation from said receiver to retain the use

thereof, and was so the lessee of said Melbourne plantation up to the determination of the appeal upon the cross-bill of your petitioner and the Morgan heirs, when, as he is advised, the court held that your petitioner, in his own right and as tutor of Etheline Buckner, had been at all times the owner of one-half of said Melbourne plantation, and that the creditors of said Morgan succession never had any interest therein beyond one-half; that the full amount of rent your petitioner has paid for said Melbourne plantation appears in the report and account of the said receivers; that since the date of the said last action by the United States Supreme Court, under the advice of counsel as to the character and effect of the action of the Supreme Court, your petitioner has only paid one-half of the stipulated rent, and the receiver holds the notes of your petitioner for said unpaid balance.

Your petitioner prays that William Grant, receiver, may make to this court a full, detailed, special report of the amount of rent your petitioner has paid for said Melbourne plantation up to the date of the partition thereof, and of all unpaid rent notes in his possession representing stipulated rent for said plantation, and that your honor examine the same and decree the payment back to your petitioner of one-half of all of the sums he has paid to said receiver for the rent of said Melbourne plantation, and that of the notes for such rent now held by the said receiver one-half of the amount thereof, or amount equal to one-half of the stipulated rent for the period covered by said notes, be cancelled and delivered up to your petitioner, together with one-half of all State and parish
35 taxes paid by said petitioner during said receivership, where paid out of his own funds, and that this *position* be referred to said receiver, William Grant, Esq., to make full report on the facts herein, in order that the court may do justice in the premises; and will ever pray, etc.

(Signed) J. R. BECKWITH,
Solicitor for Petitioner.

(*Order.*)

Upon consideration of the foregoing petition, William Grant, Esq., receiver in this cause, is directed to make report to the court of the facts relative to the subject of the petition as prayed for.

(Dated New Orleans, April 6th, 1893.)

(Signed) EDWARD C. BILLINGS, *Judge.*

EXHIBIT "B."

Account Number 1.

Wm. Grant, receiver, in account estate O. J. Morgan.

1896.		Dr.	
Oct.	4.	To rent of Berwick & Co. for Morgana.....	$175 00
Oct.	4.	To rent of J. A. Buckner for Melbourne.....	500 00
Oct.	15.	To rent of J. Stein for Wilton & Albion.....	2,000 00
Nov.	4.	To rent of J. A. Buckner for Melbourne.....	1,770 00
Nov.	18.	To rent of J. Stein & Co. for Wilton & Albion.	1,250 00
Dec.	20.	To rent of J. Stein & Co. for " " " .	380 00
			$6,005 12

Advanced on Account of 1887.

1887.		
June 16.	To balance this day...	$1,417 12

Against this balance the receiver is entitled to charge his salary as manager from July 7, 1886, at $2,000.00 per annum.

New Orleans, —— 16, 1897.

36 UNITED STATES OF AMERICA, *Eastern District of Louisiana,* } *ss:*

William Grant, being duly sworn, says that the foregoing account truly shows the several sums of money collected by him in said estate since his appointment and the disbursements made in the interest of said estate during the same time, and that said account is a full and true statement of his accounts.

(Signed) WM. GRANT, *Receiver.*

Sworn to and subscribed before me June 16, 1887.

E. R. HUNT, *Clerk.*

EXHIBIT "B."

Account Number 1.

William Grant, receiver, in account estate O. J. Morgan.

1886.		Cr.	
Nov.	11.	By paid W. S. McMillen, late receiver..... Bal. due him, as per order of court.	$1,314 24
Nov.	15.	By paid W. F. Mellen, Receiver McMillen...	250 00
"	"	" " Rouse & Grant (counsel).....	250 00
Dec.	20.	" " J. Stein & Co., for one building erected on Wilton & Albion	360 00
Dec.	21.	" " telegram to J. A. Buckner.....	55
Jan.	20.	" " State and parish taxes on estate for '86.	1,957 54
M'ch	16.	" " W. F. & D. C. Mellen, cost court, per ord...	435 55
June	16.	" balance this day.....	1,417 12
			$6,005 12

Account Number 2.

U. S. Circuit Court. No. 6612.

William Grant, receiver, in account estate O. J. Morgan.

37

1887.		Dr.	
June	16.	To balance as per last account	$1,417 12
Oct.	29.	" rec'd Albion & Wilton on acc't	310 00
Nov.	18.	" " " "	1,310 00
"	"	" Morgana	175 00
"	"	" Melbourne on acc't	833 33
Nov.	30.	" " "	833 33
Dec.	12.	" " "	833 33
			$5,712 11
Feb.	8.	To balance on hand	649 26

(Signed) WILLIAM GRANT, *Receiver.*

UNITED STATES OF AMERICA, *Eastern District of Louisiana,* } *ss:*

William Grant, receiver estate O. J. Morgan, being duly sworn, says that the foregoing account truly shows the amounts received and disbursed by him in said estate since the filing of his last account, and that the same is in all respects true and correct.

(Signed) WILLIAM GRANT.

Sworn and subscribed to before me this — day of February, 1888.

—— ——.

1887.		Cr.	
Jan.	11.	By paid advertising for 1887	$13 50
Dec.	12.	" " " " 1888	16 50
"	31.	" " " " "	4 50
"	"	" salary from July 7, 1886, to July 7, 1887	2,000 00
"	"	" receiver's expense, trip to East Carroll	31 50
1888.			
Jan.	7.	" salary from July 7, 1887, to date	1,000 00

38

Feb.	8.	By State and parish taxes for 1887	1,996 85
Feb.	8.	Balance	649 26
			$5,712 11

EXHIBIT "D."

Account Number 3.

Wm. Grant, receiver, in account with the estate of O. J. Morgan.

1888.		DR.	
Feb.	8.	To balance as per last report	$649 26
		" rent of Wilton & Albion plant.—	
Oct.	18.	From J. Stein & Co., their note for $1,500, less $1,000 repairs	500 00
Nov.	18.	From J. Stein & Co., their note	1,500 00
"	"	Rent of J. Stein & Co., Westland plant	260 00
		" of Melbourne plant.:	
Dec.	4.	J. A. Buckner	833 33
"	6.	" " his note $833.33, less $250.00 for repairs	583 33
Dec.	18.	J. A. Buckner	833 33
			$5,159 25
1889.			
January.		To balance	$829 80

William Grant, receiver of the estate of O. J. Morgan, being duly sworn, says that the foregoing is a true and correct account of his receipts and disbursements since the date of his last account.

(Signed) WILLIAM GRANT.

Sworn and subscribed to before me January 3, 1889.

——, ——.

1889.		CR.	
Jan.	10.	By State and parish taxes on estate	$2,329 45
		" salary of receiver from Jan. 7, 1888, to January 7, 1889	2,000 00
39		By balance	829 80
			$5,159 25

EXHIBIT "E."

Account Number 4.

William Grant, receiver, in account estate O. J. Morgan.

1889.		DR.	
		To balance as per last account	$829 80
Oct.	18.	" rent J. Stein & Co., Wilton & Albion	1,500 00
Nov.	18.	" " " " " "	1,500 00
"	"	" " " " Morgana	260 00
"	"	" J. A. Buckner, Melbourne	833 33
Dec.	10.	" " " "	833 33
Dec.	19.	" " " "	833 33
1890.			
Feb.	6.	" price of trees sold	60 00
			$6,649 79

1889.		Cr.	
Jan.	17.	By costs paid clerk U. S. ct. on appeal, as per order of court	$650 00
Oct.	18.	By paid Stein & Co., building one cabin	163 50
"	"	" allowed Stein & Co., for repairs, per lease.	1,000 00
"	"	" J. A. Buckner, for repairs, per lease	250 00
1890.			
Jan.	24.	" State and parish taxes paid for 1889	2,202 95
"	"	" my salary as receiver, Jan. 7, '89, to Jan. 7, '90	2,000 00
"	"	Expenses to inspect plant. acct	31 00
"	"	Expenses for ad. plant. for rent	3 00
Oct.	17.	By balance	349 34
			$6,649 79
40		To balance	$349 34

(Signed) WILLIAM GRANT, *Receiver.*

EXHIBIT "F."

Account Number 5.

William Grant in account with estate of Oliver J. Morgan.

1890.		Dr.	
Oct.	17.	To balance per acct. No. 4	$349 34
"	18.	" rent from Stein & Co. for Wilton & Albion plants. for year 1890	1,200 00
1891.			
Nov.	30.	Rent from J. A. Buckner for the Morgan plant. for the year 1890	200 00
Dec.	16.	Rent from J. A. Buckner for the Melbourne & Morgana plants. for 1891	1,124 99
Dec.	11.	To rent from Stein & Co. for the Wilton & Albion plants. for 1891	2,000 00
1892.			
Oct.	18.	To balance	2,406 18
			$8,780 50

(NOTE.—John A. Buckner has paid only ½ the amount under his lease for 1891, claiming that he has been adjudged the owner of ½ the Malbourne plantation.)

EXHIBIT "F."

Account Number 5—Continued.

1890.		CR.	
Oct. 17.	By insurance on Melbourne gin, etc.....		$119 50
" " " " "	store.....		21 00
1891.			
Feb. 4.	By taxes on real estate for 1890.....		2,412 77
1892.			
Jan. 11.	" " " " 1891.....		2,227 23
Oct. 18.	Receiver's salary from Jan. 7, 1890, to Jan. 7, 1891.....		2,000 00
41			
Oct. 18.	Receiver's salary from Jan. 7, 1891, to Jan. 7, 1892.....		2,000 00
			$8,750 50
1892.			
Oct. 18.	By balance.....		2,406 18

STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

William Grant, being duly sworn, says that the foregoing account filed by him as receiver herein is true, just, and correct in all respects, and that it includes all receipts and disbursements relating to his receivership during the period covered by the same.

(Signed) WILLIAM GRANT.

Subscribed and sworn to before me this 18th day of October, 1892.

(Signed) E. R. HUNT, *Clerk.*

EXHIBIT "Y."

Account Number 6.

Estate Oliver J. Morgan in account with William Grant, receiver.

1892.		DR.	
Oct. 18.	To balance, as per acc't No. 5 filed.....		$2,406 18
Dec. 19.	To State and parish taxes for 1892, paid on real estate in east Carroll parish.....		2,292 87
1893.			
Jan. 7.	Salary as receiver from Jan. 7, '91, to Jan. 7, '92, as per allowance of court.....		2,000 00
			$6,699 05
1893.			
April 7.	To balance.....		$4,699 05

42 Estate Oliver J. Morgan in account with William Grant, receiver.

1892.		Cr.	
Nov. 14.	By rent from J. Stein & Co. for Wilton and Albion for the year 1892.....		$1,000 00
Nov. 20.	Do. do. do. do.		1,000 00
1893.			
April 7.	By balance.....		4,699 05
			$6,699 05

William Grant, being duly sworn, says that the foregoing account is true and correct in all respects.

(Signed) WILLIAM GRANT.

Sworn and subscribed to before me this 7th day of April, 1893.

(Signed) J. A. FAHEY,
Notary Public.

Circuit Court of the United States for the Eastern District of Louisiana.

WILLIAM GAY, DELOS C. MELLEN, Adm'r, *vs.* M. F. JOHNSON *et al.*	No. 6612.
JOHN A. BUCKNER *vs.* STEVENSON WATERS, Adm'r.	No. 10633.
NARCISSE KEENE, Wife, etc., *vs.* STEVENSON WATERS, Adm'r.	No. 10634.

To the honorable the judge of the United States circuit court for the eastern district of Louisiana:

In compliance with your honor's order of April 6th, 1893, on the petition of John A. Buckner filed in said consolidated causes,
43 the undersigned, receiver of the estate of Oliver J. Morgan, respectfully makes the following report:

1st. The annexed Schedule "A" shows the amount of taxes paid on the Melbourne plantation during the time it has been in possession of receiver.

2nd. Schedule "B" shows the amount of rent paid by John A. Buckner during the same period.

3rd. Receiver holds three (3) notes given by said Buckner, each in the sum of $833.33, given for the rent of Melbourne plantation for the year 1891, one-half of which he has paid.

4th. The said Buckner has occupied the whole of said plantation during the year 1892 without any agreement of lease.

5th. He has also occupied Morgana, a part of the estate of O. J. Morgan, during 1892 without any special agreement.

6th. The receiver offers to lease Melbourne for $1,800 and Morgana for $200 for the year 1892, but the said Buckner declines these terms and made counter-proposal to pay $1,860 for both properties, which in turn was declined by the receiver, and so there was no special contract made as to these properties for the year 1892.

The receiver is of the opinion that the terms proposed by him under all the circumstances were equitable and just.

7th. The said Buckner has paid no part of the taxes assessed against the Melbourne plantation since it has been in possession of the receiver.

Respectfully submitted.

(Signed) WILLIAM GRANT, *Receiver.*

April 5th, 1893.

NOTE.—I am only able to fine the last account of W. S. McMillen, whom I succeeded as receiver, and it does not show what rent was paid for 1885 and prior years, nor does it show what taxes were paid for 1884 and prior years.

44 *Schedule Showing the Amount Assessment of Melbourne Plantation for the Several Years While in Charge of the Receiver and the Amount of Taxes Paid Thereon.*

Year.	Name of plantation.	Acres.	Assessment.	Tax paid.
1885	"	1,700	$19,700	$610 70
1886	"	1,700	21,850	759 70
1887	"	1,700	23,300	755 58
1888	"	1,700	25,250	900 01
1889	"	1,700	25,250	851 18
1890	"	1,700	25,250	937 22
1891	"	1,700	25,250	865 20
1892	"	1,700	25,250	890 71

Statement of Rents Paid by John A. Buckner, Esq., to the Receiver for Melbourne Plantation, Situate in East Carroll Parish, Louisiana.

For the year 1886, paid to W. S. McMillen and William Grant			$2,700 00
" " 1887, " " William Grant, receiver.....			2,700 00
" " 1888, " " " "			2,249 99
" " 1889, " " " "			2,249 99
For the year 1890, paid to William Grant, receiver.....			1,499 99
" " 1891, " " " " ½ rent.			1,124 99
" " 1892, " " " "			Nothing.

Filed April 25th, 1893.

(Signed) E. R. HUNT, *Clerk.*

U. S. Circuit Court, Clerk's Office.

I certify the foregoing to be true copies of the original on file in this office.

Witness my hand and seal of court, at the city of New Orleans, this 16th day of March, A. D. 1896.

E. R. HUNT, *Clerk*,
By H. J. CARTER,
Deputy Clerk.

45 *Order: Partial Rehearing.*

United States Circuit Court, Eastern Dist. of Louisiana.

D. C. MELLEN, Administrator, &c.,
vs.
OLIVER J. MORGAN, Test'y Executor, &c., *et al.*

JNO. A. BUCKNER *et al.*
v.
D. C. MELLEN, Administrator, &c.

NARCISSE K. JOHNSON *et al.*
—
D. C. MELLEN, Administrator, &c.

} All Consolidated.

On application of John A. Buckner *et al.* for a partial rehearing.

The decree complained of and the master's report, upon which the decree is based, are founded on the proposition that in the main case, originally Gay, administrator, &c., *vs.* Morgan, dative testamentary executor, &c., *et al.*, the complain-t, for himself and the other creditors, recovered from the estate of Oliver J. Morgan, deceased, and brought into court, as a fund to be distributed to the creditors and claimants of such estate, as large landed property, belonging to said Oliver J. Morgan, situated in Carroll parish, State of Louisiana, and consisting of five plantations contiguous to each other, to wit, Wilton, Melbourne, Westland, and Morgana.

The opinion of the Supreme Court rendered in the case and reported in Johnson *v.* Waters, 111 U. S., 640, in connection with the decree there directed to be entered, seems to support such proposition.

The only reservation referred to in the opinion found in the decree directed is thus stated in the decree:

"The said master may apply to the court from time to time for further directions, which are hereby reserved, especially as to the question whether the succession of Julia Morgan, deceased, is entitled to any portion of the proceeds arising from the sale of
46 said lands by virtue of the act of sale and donation made to her by Oliver J. Morgan in 1858, so far as the said act was a sale and not a donation."

The opinion of the court is clear that the act of 1858 was void as

a donation, and it apparently intimates, as this court afterwards decided, that it was equally void as a sale. The opinion and decree of the Supreme Court, however, rendered in the consolidated causes of Mellen *vs.* Buckner & Mellen *vs.* Johnson, reported in 139 U. S., 388, when carefully read and considered in the light of the facts and circumstances of the case, puts a different view upon the matter. In that case the act of 1858, while still held to be void as a donation, is held to be valid (as a sale or appropriation) for so much of the lands in question as were received by the heirs of Narcisse Deeson in payment of the debts due to them on account of the interest Narcisse Deeson had as the wife of Oliver J. Morgan in the community property, and it is said that this was substantially the view which the court entertained, although not fully explained in the case of Johnson *v.* Waters.

And the Supreme Court probable, in order that no further mistake might be made as to the scope and effect of their opinion, rendered a specific decree in which, after consolidating the causes then before the court with the principal case of Gay's Administration *vs.* M. F. Johnson, executor, &c., and by way of supplement to the decree in said principal case, it was, among other things, decreed that the claim of the heirs of Julia Morgan, deceased, and of Oliver H. Kellam, deceased, as creditors of the estate of Oliver J. Morgan, be rejected, and that in place of such supposed claims the said heirs were entitled to have and retain a certain portion of said Oliver J. Morgan's estate free from the claims of his creditors, to wit, one-half — Melbourne plantation to the Kellam heirs and two-fifths of the other four plantations to the Julia Morgan heirs. The decree thus provides that all the remaining interests in said plantations shall be subjected to the payment and satisfaction of the debts due to the creditors who shall have established their debts before the master
47 in said original suit, and then for a partition in kind or by litigation as the said heirs should direct.

From this last opinion and decree of the Supreme Court in the matter we are forced to conclude that the portions of lands set off and adjudged to the heirs of Julia Morgan and heirs of O. H. Kellam, Jr., were so set off and adjudged to them as the owners thereof in their own right as the heirs of Julia Morgan and O. H. Kellam, Jr., who were the heirs of Narcisse Deeson, the wife of Oliver J. Morgan, and not to them in any was as the heirs of Oliver J. Morgan or as creditors or claimants of his estate.

This would be very clear to us were it not for the increase of about fifteen per cent. allowed to the heirs of Julia Morgan and about seven per cent. allowed to the heirs of Oliver H. Kellam, Jr., over the portions said by the Supreme Court to have been acquired by them under the act of 1858 so far as it was valid, which increase was certainly taken out of the estate of Oliver J. Morgan, but which was considered admissible by the court on general principles of equity.

To the extent of this increase the heirs of Julia Morgan and Oliver H. Kellam, Jr., participated in the fund recovered in the original case of Gay, administrator, *vs.* Morgan, executor, *et al.*, but the careful reading and consideration of which we have given the

opinions and decrees of the Supreme Court and particularly the supplemental decree in all the cases consolidated give us the firm impression that the court intended to hold and declare that the portions recovered by said heirs were theirs of right, and that they were to have them, not only free of the claims of creditors of the estate of Oliver J. Morgan, but free from all costs and claims except as in the several decrees adjudged and as thereafter might be necessary in effecting partition.

It follows that the petition of the Kellam heirs for a rehearing of the final decree, rendered June 2nd, 1893, should be granted, but only granted so far as said heirs are concerned, unless the maintenance of the exceptions filed by them necessarily required
48 a revision of the whole decree of distribution. If such revision is not necessary, then it seems that as we have fully examined the question of the liability of the Kellam heirs to contribute to the expenses in the original suit of Gay, administrator, *vs.* Morgan, testamentary executor, we may now grant an order granting a limited rehearing and at the same time pass a decree sustaining the exception of the Kellam heirs, but otherwise maintaining the decree of June 2nd, 1893, and thus put an end to the long litigation of the case as far as this court is concerned.

(Signed) DON A. PARDEE,
Circuit Judge.

Judge Parlange concurs.
April 17, 1895.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original opinion on application of Jno. A. Buckner for partial rehearing filed in the foregoing and numbered causes April 17, 1895.

Witness my hand and seal of said court, at the city of New Orleans, this 25th day of September, 1896.

E. R. HUNT, *Clerk*,
By E. M. FULLER, *D'y Clerk.*

Opinion of U. S. Circuit Court, Offered by Defendant.

United States Circuit Court, Eastern District of Louisiana.

JOHN A. BUCKNER *et als.*
vs.
STEPHENSON WATERS, Administrator of the Estate of William Gay; D. C. MELLEN, Administrator *de bonis non*, Substituted.

NARCISSE KEENE, Wife of M. F. Johnson, *et al.*
vs.
THE SAME.

D. C. MELLEN, Administrator of Estate of Wm. Gay,
vs.
M. F. JOHNSON, Dative Testamentary Executor of Oliver J. Morgan.

Numbers 10633, 10634, and 6612 respectively of the docket of this court consolidated together as one case.

This case having come on for hearing on the petition of John A. Buckner and Etheline Buckner, joined by her said husband, for a rehearing as to that portion of the final decree made herein on the 2nd day of June, 1893, affecting the said petitioners and the one-half of the said Melbourne plantation, named in said decree, which had by former decrees herein been decreed and set apart to them—

And the court having heard counsel for the parties interest-, and being advised in the premises and for the reasons set forth in a written opinion on file in this cause—

It is now ordered, adjudged, and decreed that the prayer of the said petition for rehearing be allowed and granted, and that the said Jno. A. Buckner and Etheline Buckner be, and are, allowed and granted a rehearing herein as prayed for in their said petition.

And the court further considering that the error in said decree of June 2, 1893, complained of, being error apparent upon the face of the record, and that said decree of June 2, 1893, can be corrected without disturbing any other portion of said decree, and that the court is well advised in the premises without the necessity of a re-trial of the cause that justice and equity can be done and accomplished by a modification of said decree of June 2nd, 1893: It is therefore now ordered, adjudged, and decreed that so much of said decree of June 2nd, 1893, as the same is of record herein, as charges or attempts to charge the said John A. Buckner and Etheline Buckner as the owners of one-half of Melbourne plantation, or that attempts to charge their said one-half of said Melbourne plantation with lien privilege to contribute to or recuse the contribution

50 of the sum of seven thousand three hundred and forty-seven $\frac{30}{100}$ dollars to the payment of costs, disbursements, and solicitors' fees allowed by the court in and for the prosecution of the bill and action in case No. 6612 of the cases herein consolidated,

be, and the same are, cancelled, abrogated, annulled, and taken from said decree, and that the said Jno. A. Buckner and Etheline Buckner be, and are, now decreed to take and hold said one-half of the said Melbourne plantation allotted to them free from said charge and liability for said costs, disbursements, and solicitors' fees charged against them in said decree of June 2, 1893, as contribution to the expenses of the prosecution of said cause No. 6612 and of the causes herein consolidated, but that as to all other taxable costs the same shall stand as the same are charged and decreed in the decree of the Supreme Court and other decrees of this court made under and in obedience to the mandate of the Supreme Court as the same are recorded herein, and that except as modified by this decree the said decree of June 2nd stand in all things confirmed and final.

Decree rendered and signed in open court.

(Signed) DON A. PARDEE,
Circuit Judge.

CLERK'S OFFICE.

I hereby certify that the foregoing is a true copy of the original decree in the foregoing numbered and entitled causes of date May 8, 1895.

Witness my hand and seal of said court, at the city of New Orleans, this 25th day of September, 1896.

E. R. HUNT, *Clerk*,
By E. M. FULLER, *D'y Clerk.*

Opinion.

WILLIAM GRANT, Receiver,
vs.
JOHN A. BUCKNER.

The plaintiff in this case has sued John A. Buckner for certain rents of Melbourne plantation and certain taxes paid by him
51 on that part of Melbourne belonging to defendant, and also rents of Morgana plantation for the years 1891 & 1892, the whole amounting to $2,525.95. It is admitted, however, by plaintiff that the amount is overstated, and that the amount actually claimed to be owing by Buckner is $2,070.22. So far as the rent of Morgana is concerned, the court has already intimated that under the proof in the case the defendant is bound for amount claimed, and that ruling will not be disturbed.

There is no contention between the parties in this case as to the facts in the case, and judgment might therefore very properly be rendered against the defendant for the full amount claimed for rent and taxes on Melbourne plantation; but the defense set up by defendant is compensation and reconvention, in this, to wit, that he is and has been for many years the owner of ½ of Melbourne plantation and was in the quiet possession thereof, and that his (or his and his daughter's) title to same has been recognized by final decree of the Supreme Court of the U. S.; that, notwithstanding such owner-

ship and possession, said plantation was taken into possession of Wm. Grant, receiver, the plaintiff herein, and the defendant was deprived of his rightful possession thereof; that in order to retain possession of same he was forced to rent same from said receiver, and that he paid rents on the same for the years 1886, 1887, 1888, 1889, 1890, 1891, & 1892, a large amount of money, say $13,750.00; that deducting the amount paid for repairs and taxes during those years the balance due the plantation would be $9,308.50, one-half of which would be $4,654.25, is due to him from said receiver, — plaintiff herein.

Against this demand in compensation and reconvention the plaintiff contends that said pleas are not allowable against a debt due by an individual to a succession. It is a well-settled rule of Louisiana jurisprudence that a party owing a debt to a succession must pay the full amount of such indebtedness, notwithstanding the succession may be indebted to him at the same time, and this is the rule invoked herein. On the other hand, it is contended
52 by defendant, 1st, that the plaintiff is not a succession nor does he represent a succession, but is simply an officer of the court and representing the court, and as such should be treated as an individual.

2nd. That the rule invoked by the plaintiff applies to debts created prior to the death of decedent and not to debts that have arisen since his death and by the action of the representative of a succession. How far this contention of defendant is tenable I shall not undertake to determine, as there is no case decided by our courts exactly covering the point at issue.

It is evident, however, to me that the rule should be strictly construed and only allowed in cases where no doubt exists as to its proper application, for otherwise great hardships and loss may be visited upon honest creditors. In the instant case it is evident that plaintiff had no right to receive the revenues arising from defendant's property. The seizure of the property was mere usurpation, and while as to the possessor he has right to collect the rents, he was not acting in the name of the succession, but in the name of the court. The defendant is plainly entitled to these revenues not as a creditor of the succession, but because Receiver Grant has collected them and wrongfully withholds it.

Considering that the facts in this case clearly establish the correctness of defendant's demand and the equities of the case strongly favoring him, I am of the opinion that the claim in compensation and reconvention should be allowed.

Decision had under advisement.

WM. GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 312.

By reason of the law and the evidence and the written opinion filed herein being in favor of plaintiff in his demand for rents & taxes, it is ordered, adjudged, and decreed that there be judgment

in his favor and against defendant in the sum of two thou-
53 sand and seventy & $\frac{25}{100}$ dollars, with legal interest from January 1st, 1893, until paid, and the law and the evidence being in favor of defendant upon his demand in compensation and reconvention and against the plaintiff, it is therefore ordered, adjudged, and decreed that there be judgment in his favor upon said demand in an amount sufficient to satisfy and pay said judgment in favor of plaintiff, and that said judgment or decree *to* be extinguished by compensation, and that plaintiffs pay all costs.

Read and signed in chambers as per agreement on this 27th day of Nov., A. D. 1896.

F. F. MONTGOMERY,
Judge 7th Judicial District.

Order of Appeal.

Filed Nov. 27, 1896.

7th Judicial Court for East Carroll Parish, La.

WM. GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 312.

Judgment having been rendered in the above case in chambers, by consent of counsel for both plaintiffs and defendants, with the understanding that orders of appeal, suspensive and devolutive, should be granted by the court to one or both sides, it is therefore ordered that appeals, suspensive and devolutive, be granted to each of the parties hereto, returnable to the hon. the supreme court at New Orleans, Louisiana, on the second Monday of Dec., A. D. 1896; that the bond for the suspensive appeal is hereby fixed at $150.00 for each party hereto, and the bond for the devolutive appeal at the same amount for each.

Read and signed in chambers this 27th day of November, 1896.

F. F. MONTGOMERY,
Judge 7th Judicial District.

Appeal Bond.

Filed Dec. 7th, 1896.

THE STATE OF LOUISIANA,
Parish of East Carroll.

Seventh District Court.

54 WM. GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 312.

Know all men by these presents that we, Wm. Grant, receiver, as principal, and C. S. Wyly, as security, are held and firmly bound

unto J. D. Tompkins, clerk of the 7th district court in and for said parish, in the sum of one hundred and fifty dollars, lawful money of the United States of America, to be paid to the said J. D. Tompkins, clerk, or his successor in office; for the payment of which, well and truly to be made, we bind ourselves and heirs and executors, administrators, and assigns *formerly* by these presents this 7th day of December, A. D. 1896.

Whereas in the above-styled suit, in which Wm. Grant, receiver, is plaintiff and John A. Buckner is defendant, the said court has rendered final judgment, wherefrom said Wm. Grant, receiver, has taken a desolutive appeal:

Now, the condition of the above obligation is that if said Wm. Grant, receiver, appellant, shall prosecute his said appeal and well and truly pay such judgment as shall be rendered against him by the appellate court, or that the same shall be satisfied by the proceeds of sale of his estate if he be cast in the appeal, then this obligation to be void; otherwise to be in full force and virtue.

WM. GRANT, *Receiver*,
By C. S. WYLY, *Attorney*.
C. S. WYLY, *Surety*.

Minute Entries.

THURSDAY MORNING, *January* 10, 1895.

WM. GRANT, Receiver,
vs.
JNO. A. BUCKNER. } No. 312.

Continued by consent.

MONDAY MORNING, *October* 19, 1896.

WM. GRANT, Receiver,
vs.
JNO. A. BUCKNER. } No. 312.

This case taken up and trial proceeded with.

55 TUESDAY MORNING, *October 20th*, 1896.

WM. GRANT, Receiver,
vs.
JNO. A. BUCKNER.

The trial of this case resumed, argument heard, and case taken under advisement, and by consent of both parties it is ordered that judgment may be rendered and signed at chambers and orders of appeal granted all parties and the amount of bond fixed in the order granting the appeal.

F. F. MONTGOMERY,
Judge 7th Judicial District Court.

Seventh District Court, Parish of East Carroll, Louisiana.

WM. GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 312.

I, D. W. Gilmour, deputy clerk of the 7th district court in and for the parish of East Carroll, Louisiana, do hereby certify that the foregoing fifty-four pages contain a full, true, and complete transcript of all documents filed, all proceedings had, and all evidence adduced in the above styled and numbered cause, wherein Wm. Grant, receiver, is plaintiff and appellant and John A. Buckner is defendant and appellee, as the same appear on file and of record in the clerk's office of said court, said foregoing pages constituting a complete transcript of the record in said cause.

Witness my official signature and seal, at my office, on this the 12th day of December, 1896.

D. W. GILMOUR,
D'y Clerk, 7th Judicial District Court for East Carroll Parish, Louisiana.

56 PROCEEDINGS IN THE SUPREME COURT OF LOUISIANA.

Motion for Extension of Return Day.

Entered and filed December 16, 1896.

Supreme Court of Louisiana.

WILLIAM GRANT, Receiver, Appellant,
vs.
JOHN A. BUCKNER, Appellee. } No. —.

On motion of William Grant, appellant in this cause, and upon his suggestion that the clerk of the district court of the parish of East Carroll is unable, owing to the shortness of the time, to prepare the transcript of appeal in this cause, which was made returnable on the 14th—

It is now allowed, in consideration of the affidavit of appellant, that an extension of time be granted to the 24th of December, 1896, in which to file the transcript.

Affidavit of Appellant Attached to Motion for Extension of Return Day.

Filed December 16, 1896.

From 7th District Court, Parish of East Carroll.

WILLIAM GRANT, Receiver, Appellant,
vs.
JOHN A. BUCKNER, Appellee.

William Grant, being duly sworn, says that he is plaintiff in the above cause, and that he has taken an appeal from the final judg-

ment rendered therein against him on the 27th of November, 1896, which he perfected on the 7th of December, 1896; that said appeal was made returnable in the supreme court on December 14th, 1896, and that he has applied to the clerk for the transcript, but has been advised by him that he will be unable to prepare it within the return day, owing to the shortness of the time allowed, and that an extension of time to December 24 is necessary to enable him to do so; all which will appear from said cause certificate annexed.

57 Affi*davit* further says that there is no other cause of delay in the making of said transcript than as stated herein.

WILLIAM GRANT.

Sworn and subscribed to before me this 16th day of December, 1896.

T. McC. HYMAN,
Clerk Supreme Court La.

Affidavit of Clerk of the District Court Attached to Motion for Extension of Return Day.

Filed December 16, 1896.

7th District Court, Parish of East Carroll, Louisiana.

WM. GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 312.

I, Jesse D. Tompkins, clerk of the seventh district court in and for East Carroll, Louisiana, hereby certify that a final judgment was rendered on the 27th day of November, 1896, in the above-styled cause in favor of defendant, from which plaintiff has taken a devolutive appeal, returnable to the honorable the supreme court of Louisiana, at New Orleans, on the 14th day of December, 1896; that said appeal was perfected by plaintiff's having filed a devolutive appeal bond on the 7th day of December, 1896; that, on account of the short time allowed for completing and filing said transcript, it will be impossible for me to complete said transcript in time to be filed within the legal delay, and that an extension of time for completing and filing said transcript is necessary; that an extension of time to the 24th day of December, 1896, will be sufficient to complete and file said transcript of appeal.

Witness my official signature and seal on this the 11th day of December, 1896.

J. D. TOMPKINS, *Clerk.*
By D. W. GILMOUR, *D'y Clerk.*

58 *Order Extending Return Day.*

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, *December 16th*, 1896.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

WILLIAM GRANT, Receiver, Appellant,
vs.
JOHN A. BUCKNER, Appellee. } No. 12372.

On motion of William Grant, appellant in this case, and upon his suggestion that the clerk of the district court of the parish of East Carroll is unable, owing to the shortness of time, to prepare the transcript of appeal in this cause, which was made returnable on the 14th; it is now ordered, in consideration of the affidavit of appellant, that an extension of time be granted to the 24th day of December, 1896, in which to file the transcript.

Transcript of appeal. Filed December 23rd, 1896. (Signed) Paul E. Mortimer, d'y clerk.

59 *Answer and Prayer to Amend.*

Filed January 19th, 1897.

Supreme Court of Louisiana.

WILLIAM GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 12373.

Now comes John A. Buckner, the defendant and appellee in the above entitled and numbered suit, through his undersigned counsel, and filed this his answer to the appeal herein taken by Wm. Grant, receiver, plaintiff and appellant, and says that appellee prays that the judgment of the lower court, rendered and signed in this case on November 27th, 1896, be amended in favor of appellee by decreeing not only that the demands of the plaintiff and appellant are extinguished, as provided in said judgment, but fully reserving to defendant and appellee the right to demand and recover from the said Wm. Grant, receiver, the difference between the amount required to compensate the demands of *to* said Wm. Grant, receiver, set up in this suit, and the amount due to said John A. Buckner by the said Wm. Grant, receiver.

Wherefore appellee prays that this honorable court amend the decree of the lower court herein in the manner above stated, and

for such further and equitable relief as may be proper in the premises.

SAUNDERS & MILLER,
Att'ys for Defendant & Appellee.

Submission of Cause.

(Extract from the Minutes.)

NEW ORLEANS, SATURDAY, *January 23rd*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

60 WILLIAM GRANT, Receiver, *vs.* JOHN A. BUCKNER. } No. 12372.

This cause came on this day to be heard and was argued by counsel—Mr. Charles S. Wyly appearing for the plaintiff, appellant, and Mr. Eugene D. Saunders and Mr. Joseph E. Ransdell on behalf of the defendant, appellee—and the cause, having been submitted by counsel, was taken under advisement upon the briefs for the respective parties and the papers now on file.

Opinion of the Supreme Court.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *February 15th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

WILLIAM GRANT, Receiver, *vs.* JOHN A. BUCKNER. } No. 12372.

Appeal from the seventh judicial district court for the parish of East Carroll.

This is a suit for rent, and it was defended mainly upon a plea of offset or compensation, and on the trial there was judgment in favor of the plaintiff for the amount of the debt and a corresponding judgment in favor of the defendant, one judgment compensating and

extinguishing the other. From that judgment the plaintiff prosecutes this appeal.

61 The facts necessary to be stated are very fairly recited in the original brief of defendant's counsel, and to which there appears to be no objection urged on the other side, and consequently we append an extract therefrom as furnishing an historical résumé thereof mainly:

"The present suit grows out of a receivership proceeding which has been pending for many years in the United States circuit court for the eastern district of Louisiana.

"The controlling facts bearing upon this controversy may be briefly stated.

"Oliver J. Morgan was in ante-bellum times a rich planter, owning five plantations in Carroll parish, Louisiana. His wife died intestate in 1844, leaving but two children. All the property standing in her husband's name at the time of her death belonged to the community of acquents and gains that existed between them. Her two children, therefore, as her sole heirs, became on her death the owners of her undivided one-half of the community property.

"Mr. Morgan, however, wished to settle during his own lifetime the rights of his two children in his wife's estate and his own. In execution of this desire he conveyed, in 1858, certain property to Mrs. Julia Morgan, one of his daughters, then living, partly as a donation from himself and partly in satisfaction of her rights as one of her mother's heirs; and to the children of a predeceased daughter, Mrs. Kellam, he made a similar conveyance of other property, partly as a donation and partly in satisfaction of their rights as heirs of Mrs. Kellam. The defendant, John A. Buckner, is now the sole representative and heir of the interest of the Kellam children. Melbourne plantation was the property so conveyed and donated by Mr. O. J. Morgan to the children of his predeceased daughter, Mrs. Kellam, in satisfaction of their interests in his wife's estate and his own. Mr. Morgan died in 1860, and there was then no question as to the enormous solvency of his estate; but as the result of the war,

62 partly from the emancipation of the slaves and partly for other causes, the value of the estate was greatly decreased by 1867. In that year an administration of the estate of Oliver J. Morgan was opened and all of his property sold. At these sales the heirs bought in the plantations so as to continue owning them in the same manner as had been intended by Mr. Morgan.

"Some years after these sales Gay, a personal creditor of Oliver J. Morgan and not of the community, filed a bill in equity in the Federal circuit court to set the probate sales aside, on the ground of fraud. After a long litigation the probate sales were set aside, but the avoidance of these sales simply subjected the community interest of the succession of Mr. O. J. Morgan in the several plantations to the pursuit of his creditors, but did not forfeit or affect the interests of the descendants of his two daughters to their mother's rights in the community. It became, therefore, incumbent on the Federal court to determine in what proportion and by what title the several plantations belonged to the heirs of Mrs. O. J. Morgan, and in what

proportion they belonged to the succession of Mr. O. J. Morgan, her husband. The determination of this question was complicated by the fact that the plantations and their equipment constituted a part and not the whole of the community property, as it had existed from Mrs. Morgan's death, in 1844, to her husband's death in 1860, the slaves and much other property having disappeared during the war. It was further complicated by the fact that each branch of Mrs. Morgan's heirs had accepted from her husband after her death specific property in satisfaction of their interests in her estate, and that the whole of the property so accepted had from that time on been in the possession and enjoyment of the heirs.

"The Supreme Court of the United States finally adjusted the interests of the heirs and of the creditors (Mellen *vs.* Buckner, 139 United States, 411). In this adjustment it was decreed that John A. Buckner, as sole surviving representative and heir of one branch of Mrs. Morgan's heirs, should be recognized as owner of one-half of Melbourne plantation, and that the other half of said plantation should be liable for the personal debts of Oliver J. Morgan. The decree was silent as to the ownership of the revenues of the plantation, but contains nothing indicating that the revenues were not to follow the title. The decree of the United States Supreme Court recognized that the acts of donation and conveyance executed by Mr. D. J. Morgan in 1858 were valid in so far as they conveyed specific property to his wife's heirs in satisfaction of their interest in her estate, but held that they were void in so far as they purported to be donations of property of his own; that this, the effect and meaning of that decree, has been declared by the circuit court. The result, therefore, of this decree is to establish that John A. Buckner, or those of whose rights he is now sole heir, have been since 1858 owners of an undivided one-half of Melbourne plantation. The decree simply ascertains and declares the fact as it had always existed.

63

"Before the final decree of the United States Supreme Court in 1891 (Mellen *vs.* Buckner, 139 United States, 388), all the plantations had been in charge of a receiver appointed by the Federal court in the suit to set aside the probate sales. This receiver had rented Melbourne plantation as an entirety to the defendant, John A. Buckner, for the years 1886, 1887, 1888, and 1889, and by his own admission (p. 47, Tr.) had collected from him $9,900 as the rent of the whole of said plantation for said years. According to this showing, the receiver, acting as receiver, had collected from Buckner for rent $4,500 more than he was entitled to collect during the years 1886 to 1889. He now brings this suit to collect from Buckner the rent for one-half of Melbourne plantation for the years 1891 and 1892, one-half of the taxes on Melbourne for those years, and a trifling sum for the rent of some other property, aggregating in all $2,050.22.

"To this demand Buckner pleads, in compensation and reconvention, the amount due him by the receiver, about $4,654.25. The lower court allowed the plea so far as required to extinguish the

claim propounded by the receiver in this suit, but did not
64 give judgment over against the receiver for the surplus, p. 55.

"The contention of the defendant is that the plaintiff in his capacity as receiver has already collected from him (defendant) more than double the amount now sued for; that this amount was collected by the receiver as rent for the very plantation for additional rent of which this suit is brought; that on a full accounting of rents due to and collected by the receiver from defendant for rent of Melbourne plantation the receiver has been overpaid by several thousand dollars; that what the plaintiff owes defendant is due in his capacity as receiver for money actually paid by defendant to plaintiff since his (plaintiff's) appointment as receiver, and which, having been unjustly collected, should be at once withdrawn from the funds of the receivership and returned to defendant."

In response to this plea the plaintiff argues:

1st. That the decree of the United States Supreme Court gave defendant one-half of Melbourne plantation in payment and satisfaction of a debt due him by the succession of O. J. Morgan, but did not give him the revenues accruing therefrom antecedent to the gift.

As explanatory of the situation of affairs in the United States circuit court we append the following decree of that court, which embraces the primary subject of the contestation in the instant case. It is as follows, viz:

"United States Circuit Court, Eastern District of Louisiana.

D. C. MELLEN, Administrator, etc.,
vs.
OLIVER J. MORGAN, Ex., etc., *et al.*

JOHN A. BUCKNER *et al.*
vs.
D. C. MELLEN, Administrator, etc.

NARCISSE K. JOHNSON *et al.*
—.
D. C. MELLEN, Administrator, etc.

} All Consolidated.

65 "On application of John A. Buckner *et al.* for a partial rehearing.

"The decree complained of and the master's report upon which the decree is based are founded on the proposition that in the main case, originally Gay, administrator, etc., *vs.* Morgan, dative testamentary executor, etc., *et al.*, the complainant, for himself and the other creditors, recovered from the estate of Oliver J. Morgan, deceased, and brought into the court as a fund to be distributed to the creditors and claimants of such estate a large landed property belonging to said Oliver J. Morgan, situated in Carroll parish, State

of Louisiana, and consisting of five plantations contiguous to each other, to wit, Wilton, Melbourne, Westland, and Morgana.

"The opinion of the supreme court rendered in the case and reported in Johnson *vs.* Waters, 111 United States, 640, in connection with the decree there directed to be entered, seems to support such proposition.

"The only reservation referred to in the opinion found in the decree directed is thus stated in the decree:

"'The said master may apply to the court from time to time for further directions, which are hereby reserved, especially as to the question whether the succession of Julia Morgan, deceased, is entitled to any portion of the proceeds arising from the sale of said lands by virtue of the act of sale and donation made to her by Oliver J. Morgan in 1858, so far as the said act was a sale and not a donation.'

"The opinion of the court is clear that the act of 1858 was void as a donation, and it apparently intimates, as this court afterwards decided, that it was equally void as a sale. The opinion and decree of the supreme court, however, rendered in the consolidated cases of Mellen *vs.* Buckner and Mellen *vs.* Johnson, reported in 139 United States, 388, when carefully read and considered in the light of the facts and circumstances of the case, puts a different view upon the matter. In that case the act of 1858, while still held to be
66 void as a donation, is held to be valid (as a sale or appropriation) for so much of the lands in question as were received by the heirs of Narcisse Deeson in payment of the debts due to them on account of the interest Narcisse Deeson had, as the wife of Oliver J. Morgan, in the community property, and it is said that this was substantially the view which the court entertained, although not fully explained in the case of Johnson *vs.* Waters.

"And the supreme court, probably in order that no further mistake might be made as to the scope and effect of their opinion, rendered a specific decree, in which, after consolidating the causes then before the court with the principal case of Gay, administrator, *vs.* M. F. Johnson, executor, etc., and by way of supplement to the decree in said principal case, it was, among other things, decreed that the claim of the heirs of Julia Morgan, deceased, and of Oliver H. Kellam, deceased, as creditors of the estate of Oliver J. Morgan be rejected, and that in place of such supposed claims the said heirs were entitled to have and retain a certain claim, portion of said Oliver J. Morgan's estate, free from the claims of his creditors, to wit, one two-fifths of the other four plantations to the Julia Morgan heirs. The decree then provides that all the remaining interests in said plantations shall be subject to the payment and satisfaction of the debts due to the creditors who shall have established their debts before the master in said original suit, and then for a partition in kind or by litigation, as the said heirs should direct.

"From this last opinion and decree of the supreme court in the matter we are forced to conclude that the portions of lands set off and adjudged to the heirs of Julia Morgan and heirs of O. H. Kellam, Jr., were so set off and adjudged to them as the owners thereof in

their own right, as the heirs of Julia Morgan and O. H. Kellam, Jr., who were the heirs of Narcisse Deeson, the wife of O. J. Morgan, and not to them in any way as the heirs of Oliver J. Morgan or as creditors or claimants of his estate.

67 "This would be very clear to us were it not for the increase of about fifteen per cent. allowed to the heirs of Julia Morgan and about seven per cent. allowed to the heirs of Oliver H. Kellam, Jr., over the portions said by the Supreme Court to have been acquired by them under the act of 1858, so far as it was valid, which increase was certainly taken out of the estate of Oliver J. Morgan, but which was considered admissible by the court on general principle of equity.

"To the extent of this increase the heirs of Julia Morgan and Oliver H. Kellam, Jr., participated in the fund recovered in the original case of Gay, administrator, *vs.* Morgan, executor, *et al.*, but the careful reading and consideration of which we have given the opinions and decrees of the Supreme Court, and particularly the supplemental decree in all cases consolidated, give us the firm impression that the court intended to hold and declare that the portions recovered by said heirs were theirs of right, and that they were to have them not only free of the claims of creditors of the estate of Oliver J. Morgan, but free from all costs and claims, except as in the several decrees adjudged and as thereafter might be necessary in effecting partition.

"It follows that the petition of the Kellam heirs for a rehearing of the final decree, rendered June 2nd, 1893, should be granted, but only granted so far as said heirs are concerned, unless the maintenance of the exceptions filed by them necessarily required a revision of the decree of distribution. If such revision is not necessary, then it seems that, as we have fully examined the question of the liability of the Kellam heirs to contribute to the expenses in the original suit of Gay, administrator, *vs.* Morgan, testamentary executor, we may now grant an order granted a limited rehearing, and, at the same time, pass a decree sustaining the exception of the Kellam heirs, but otherwise maintaining the decree of June 2nd, 1893, and thus put an end to the long litigation of the case as far as this court is concerned.

(Signed) DON A. PARDEE,
Circuit Judge.

Judge Parlange concurs.
April 17th, 1895."

68 *Vide* Johnson *vs.* Waters, 111 U. S., 640.
Mellen *vs.* Johnson, 139 U. S., 388.

From the foregoing opinion and statement of facts it is clear that prior to the final adjudication by the Supreme Court of the relative rights of the respective parties all of the plantations involved in the litigation had been under the control and management of the receiver, and that he had rented the entire Melbourne plantation to the defendant, John A. Buckner, for the years 1886, 1887, 1888, and 1889, and had collected rents from him therefor aggregating $9,900.00

in amount—that is to say, $4,950.00 more then he was entitled to collect during those years.

As the present suit involves the rent of the years 1890 and 1891 and some small arrearages of taxes, the defendant pleads in compensation and extinguishment thereof a sufficient amount of said sum paid in excess to satisfy the receiver's demands.

In this court the defendant and appellee has answered the plaintiff's appeal and prayed that the judgment appealed from be so amended in his favor as to reserve him "the right to demand and recover from said William Grant, receiver, the difference between the amount required to compensate the demands of the said William Grant, receiver, set up in this suit and the amount due to said John A. Buckner by the said Wm. Grant, receiver."

It seems to us to be perfectly apparent that the decree of the court recognizing the right of the heirs of Julia Morgan to one-half of the Melbourne plantation of necessity carried therewith a right to a proportionate amount of its annual revenues, and equally so the right to demand of the receiver a restitution of the amount he has unduly received.

We are of opinion that the defendant has the right to urge the plea of compensation to an amount sufficient to relieve himself from personal liability to the plaintiff. As the receiver has sought the enforcement of his demands in a court of the State, he cannot at the same time turn the defendant around to another recourse in
69 the United States circuit court.

The demand in compensation herein made is but a claim to discharge a present obligation for the rent of two years now due by the application thereto *pro tanto* of the avails of previous years during which the receiver collected a greater sum than he was entitled to have received.

Beatty, syndic, *vs.* Scuddy, 10th Ann., 404.
Mercer, adm'r, *vs.* Lobit, 10th Ann., 47.
Lemane *vs.* Lemane, 27th Ann., 694.

The doctrine *quæ temporalia sunt* applies to the defendant's demands. What he might not use as a sword he may use as a shield.

We are of opinion that the defendant is justly and equitably entitled to compensation.

That, while admitting possession of rents taken from the defendant to a greater amount than he was entitled to receive, the receiver cannot stay the defendant's demand in compensation as a means of enabling him (the receiver) to still further increase his receipts and relegate him to another tribunal for ultimate settlement thereof.

The judgment should be so amended as to conform to the answer of the appellee, and, as thus amended, the same should be affirmed.

It is therefore ordered and decreed that the judgment appealed from be so amended as to reserve the defendant's right to demand of and receive from the plaintiff the residue of the amount of the rents he has collected in excess of the sum actually due by the defendant, after a sufficiency thereof has been used to extinguish by compensation the demands of said receiver in this suit, and that as

thus amended same be affirmed at the cost of the plaintiff and appellant in both courts.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *February 15th*, 1897.

The court was duly opened pursuant to adjournment.

70 Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

WILLIAM GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 12372.

On appeal from the 7th judicial district court for the parish of East Carroll.

It is ordered and decreed that the judgment appealed from be so amended as to reserve the defendant's right to demand of and recover from the plaintiff the residue of the amount of the rents he has collected in excess of the sum actually due by the defendant, after a sufficiency thereof has been used to extinguish by compensation the demands of said receiver in this suit, and that as thus amended same be affirmed at the cost of the plaintiff and appellant in both courts.

Petition for Writ of Error and Order.

Filed March 5th, 1897.

Supreme Court of Louisiana.

WILLIAM GRANT, Receiver,
vs.
JOHN A. BUCKNER. } No. 12372.

To the honorable the chief justice of the supreme court of the State of Louisiana:

The petition of William Grant, receiver of the estate of Oliver J. Morgan, plaintiff in the above-entitled cause, with respect shows:

That there is error to his prejudice in the final judgment rendered by the supreme court of the State of Louisiana in the above-entitled cause on the fifteenth day of February, A. D. 1897; that said supreme court which rendered said judgment was and is the highest court of the State of Louisiana in which a decision could be

71 had in said cause, and that said judgment has now become final.

Petitioner further shows that there was drawn in question in the decision of said cause the interpretation and effect of the judgment of the Supreme Court of the United States in the case of Mellen *versus* Buckner, 139 United States Reports, 410, and the effect of the decrees and orders of the circuit court of the United States for the eastern district of Louisiana, and the rights, privileges, and immunities of petitioner in his capacity as receiver, appointed in said cause by said circuit court; that there was also drawn in question the exclusive jurisdiction of said courts to dispose of the funds in petitioner's hands as such receiver, and that said decision was against the rights, privileges, and immunities claimed by him under said orders and decrees, and that he desires to have the said erroneous decision and judgment of the said supreme court of Louisiana reviewed and corrected by the Supreme Court of the United States, under the provisions of section 709 of the Revised Statutes of the United States, upon the annexed assignment of errors and upon other plain errors apparent on the face of the record.

Wherefore petitioner prays that a writ of error may be allowed, returnable to the Supreme Court of the United States, as the law directs, upon petitioner's furnishing bond and security in such sum as your honor may direct, and that said John A. Buckner, defendant, may be duly cited to answer in the premises.

And petitioner prays for such further orders as may be necessary in the premises.

March 5, 1897.

(Signed) J. D. ROUSE,
Att'y for Pet'rn.

Order.

Let the prayer of the foregoing petition be granted, and let a writ of error be allowed as prayed, upon petitioner furnishing bond with solvent surety in the sum of five hundred dollars, conditioned as the law directs.

New Orleans, March 5, 1897.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

Assignment of Errors.

Filed March 5th, 1897.

72 Supreme Court of the United States.

WILLIAM GRANT, Receiver, Plaintiff in Error,
vs.
JOHN A. BUCKNER, Defendant in Error.

Assignment of Errors.

I.

The State court erred in permitting the defendant, John A. Buckner, to offer evidence to establish his reconventional demand, against the objection of the plaintiff.

II.

Said court erred in adjudging that the defendant Buckner was entitled to judgment against the plaintiff for one-half of the rents of the Melbourne plantation collected by plaintiff, as receiver, for the time prior to the date of the decree of the Supreme Court of the United States in the case of Mellen *versus* Buckner, 139th United States, 410, when it appeared from the uncontradicted proofs that the rents collected by the receiver and those due by Buckner were not sufficient to pay the expenses of the receiver, incurred in his administration, and his compensation, which, by said decree, were made a prior charge against said rents, thereby refusing to give proper effect to said decree.

III.

The disposition and distribution of the rents being within the exclusive jurisdiction of the circuit court of the United States which appointed plaintiff as receiver, the State court was without jurisdiction to award any part thereof to defendant on his reconventional demand, and the State court erred in this respect.

IV.

The State court, upon the disputed facts in the case, erred in giving judgment in favor of the defendant on his reconventional demand, and in reserving to him the right to recover from the receiver an additional amount on accounts of rents collected by the plaintiff for the use of Melbourne plantation while it was under the plaintiff's administration.

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V.

The State court erred in requiring the plaintiff to account to such court for the moneys in his hands collected by him as receiver under authority of the circuit court of the United States which appointed him.

VI.

The State court erred in deciding that the plaintiff, in his capacity as receiver, wrongfully collected of the defendant rents for the whole of Melbourne plantation while the same was in his possession and being administered by authority of the United States circuit court.

(Signed) J. D. ROUSE,
Att'y for Pl'ff in Error.

Copy of a Writ of Error Lodged in the Clerk's Office of the Supreme Court of the State of Louisiana.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William Grant, receiver of the estate of Oliver J. Morgan, plaintiff, and John A. Buckner, defendant, numbered 12372 of the docket, wherein was drawn in question the validity of a statute of and an authority exercised under the United States and the decision was against their validity, and wherein was drawn in question the construction of the clause of the Constitution and of a statute of and a commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up and claimed under such clause of the said
74 Constitution, treaty, statute, and commission, a manifest error hath happened, to the great damage of the said William Grant, receiver, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] (Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

A true copy.
(Signed) E. R. HUNT, *Clerk.*

Allowed by—
(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

Endorsed: Supreme court of Louisiana. No. 12372. William Grant, receiver, *versus* John A. Buckner. (Writ of error.) Copy of

a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana in pursuance of the statute in such cases made and provided this 5 day of March, one thousand eight hundred and ninety-seven. (Signed) J. D. Rouse, attorney of plaintiff in error. Filed March 5th, 1897. (Signed) T. McC. Hyman, clerk.

Bond for Writ of Error.

Know all men by these presents, that we, William Grant, receiver estate Oliver J. Morgan, as principal, and A. G. Brice, of New
75 Orleans, as surety, are held and firmly bound unto John A. Buckner in the full sum of five hundred dollars, to be paid to the said John A. Buckner, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at the supreme court of the State of Louisiana, in the city of New Orleans, in a suit depending in said court, wherein William Grant, receiver estate Oliver J. Morgan, was plaintiff and John A. Buckner was defendant, judgment was rendered against the said William Grant, receiver, plaintiff, on the reconventional demand of said John A. Buckner, defendant, and the said William Grant, receiver, having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said John A. Buckner, citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington, thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said William Grant, receiver, shall prosecute his writ to effect and answer all damages and cost if he fail to make his plea good, than the above obligation to be void; else to remain in full force and virtue.

(Signed) WILLIAM GRANT, [SEAL.]
Receiver Estate Oliver J. Morgan.

(Signed) A. G. BRICE. [SEAL.]

Sealed and delivered in the presence of—

—— ——.

Approved:
FRANCIS T. NICHOLLS,
Chief Justice.

STATE OF LOUISIANA, } *ss:*
Parish of Orleans, }

Personally appeared A. G. Brice, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in New Orleans, State of Louisiana, and is worth the full sum of twenty-five hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) A. G. BRICE.

76 Subscribed and sworn before me this fifth day of March, 1897.

(Signed) H. G. DUPRE,
[SEAL.] *Notary Public.*

Endorsed: Supreme court of Louisiana. No. 12372. William Grant, receiver, *versus* John A. Buckner. Bond for writ of error. Filed March 5, 1897. (Sg.) T. McC. Hyman, clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the above and foregoing seventy-six (76) pages contain a full, true, and complete copy of the transcript of the proceedings had in the seventh judicial district court for the parish of East Carroll in a certain suit wherein Wm. Grant, receiver, was plaintiff and John A. Buckner was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiff, which appeal is now on the files thereof under No. 12372.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this twenty-seventh day of March, anno Domini one thousand eight hundred and ninety-seven, and in the one hundred and twenty-first year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

T. McC. HYMAN, *Clerk.*

77 *Certificate of the Chief Justice.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate in the case of William Grant, receiver, *vs.* John A. Buckner, No. 12372, is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and affixed my seal, at the city of New Orleans, this twenty-seventh day of March, anno Domini one thousand eight hundred and ninety-seven, and in the one hundred

Seal Supreme Court of the State of Louisiana.

and twenty-first year of the Independence of the United States of America.

FRANCIS T. NICHOLLS,
Chief Justice.

78 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William Grant, receiver of the estate of Oliver J. Morgan, plaintiff, and John A. Buckner, defendant, numbered 12372 of the docket, wherein was drawn in question the validity of a statute of and an authority exercised under the United States and the decision was against their validity, and wherein
79 was drawn in question the construction of the clause of the Constitution and of a statute of and a commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up and claimed under such clause of the said Constitution, treaty, statute, and commission, a manifest error hath happened, to the great damage of the said William Grant, receiver, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
FRANCIS T. NICHOLLS,
Chief Justice.

[Endorsed:] No. —. William Grant, rec'r, *versus* John A. Buckner. Writ of error.

80 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to John A. Buckner, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein William Grant, receiver of the estate of Oliver J. Morgan, is plaintiff in error and you, John A. Buckner, are defendant in error, to show cause, if any there be, why the judgment rendered against the said William Grant, receiver of the estate of Oliver J. Morgan, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fifth day of March, in the year of our Lord one thousand eight hundred and ninety-seven.

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

Service of the within citation accepted March 6th, 1897.

SAUNDERS & MILLER &
J. E. RANSDELL,
Attorneys for Defendant in Error, J. A. Buckner.

[Endorsed:] Supreme court of the State of Louisiana. No. —. William Grant, receiver, plaintiff in error, *vs.* John A. Buckner, defendant in error. Citation. Sheriff's return. Filed March 29, 1897. T. McC. Hyman, clerk.

Endorsed on cover: Case No. 16,551. Louisiana supreme court. Term No., 347. William Grant, receiver of the estate of Oliver J. Morgan, plaintiff in error, *vs.* John A. Buckner. Filed April 5th, 1897.

No. 347. 89.

Brief of Rouse for P. C.

Filed Mar. 21, 1898.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 347.

895
P. C.

WM. GRANT, RECEIVER, PLAINTIFF IN ERROR,

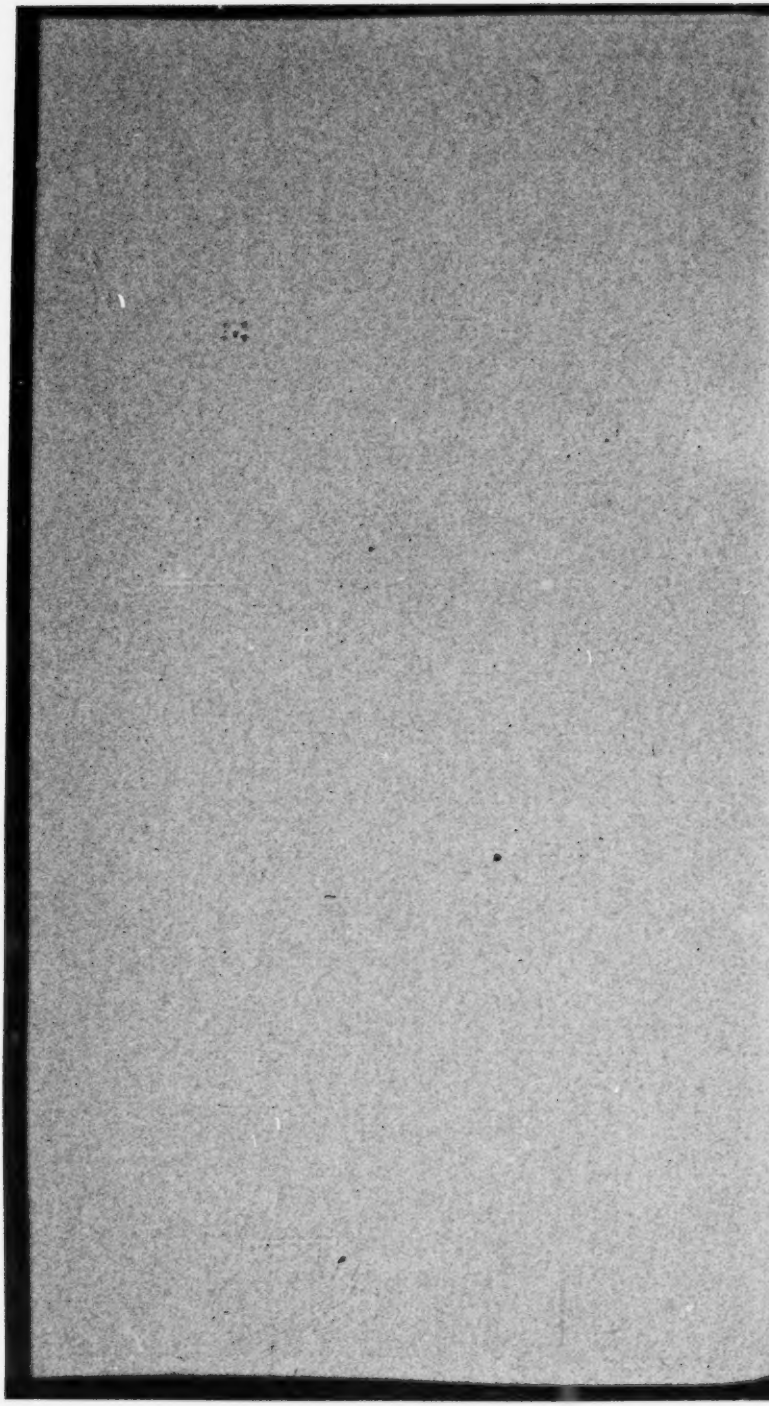
versus

JOHN A BUCKNER, DEFENDANT IN ERROR.

BRIEF IN BEHALF OF PLAINTIFF IN ERROR.

J. D. ROUSE,
Attorney for Plaintiff in Error.

L. GRAHAM & SON, LTD., 207-211 BARONNE ST., NEW ORLEANS.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 347.

WM. GRANT, RECEIVER, PLAINTIFF IN ERROR,

versus

JOHN A BUCKNER, DEFENDANT IN ERROR.

BRIEF IN BEHALF OF PLAINTIFF IN ERROR.

STATEMENT.

From the statement made by the plaintiff in error in his deposition in answer to the tenth interrogatory (R., p. 15), which is undisputed, it appears that Wm. Gay, a creditor of Oliver J. Morgan, deceased, late of East Carroll parish, filed a bill in his own behalf and on behalf of other creditors in the Circuit Court of the United States against M. F. Johnson, John A. Buckner, tutor, and others. The purpose of the suit was to set aside the sales that had been made in the succession of Oliver J. Morgan on certain grounds of fraud, and to subject the property to the payment of the complainant's claim and the claims of other creditors of the succession. A decree was rendered in favor of the creditors setting aside the sales, and affirmed by this Court. The case is reported under the title of Johnson vs. Waters, 111 U. S. 640. In compliance with the mandate of this Court, W. L. McMillan was appointed receiver of all the property sold in the succession

of Oliver J. Morgan, which included the Melbourne and Morgana plantations; and upon his resignation in 1886 the plaintiff in error was appointed to succeed him, with authority to take possession of the property and lease the same (R., p. 18).

The decree of the Supreme Court (111 U. S. 675) having reserved the question whether the succession of Julia Morgan was entitled to any portion of the *proceeds* of the sale of the lands of Oliver J. Morgan donated to her, John A. Buckner in his own behalf and as tutor of Etheline Buckner, his minor child, representing the interest of Julia Morgan, filed an ancillary bill, renouncing any claim as creditor of the succession, and claiming title to Melbourne plantation under the act of donation. The Circuit Court gave Buckner and his minor child 43.35-100 of Melbourne, but on appeal this Court awarded them one-half. This allowance was made, as declared by the Court, *not as a matter of strict right*, but on purely equitable grounds. (See Mellen vs. Buckner, 139 U. S. 410.) The decree further declared that Buckner and his minor child "were to retain one-half of Melbourne in lieu of any supposed claim they might have as creditors of the succession of Morgan.

By a subsequent clause of the decree, the Court made a specific disposition of the revenues in the hands of the receiver, in the following language:

"Any moneys in the hands of the receiver, after paying his "expenses and compensation, are to be divided between the "creditors and heirs in the proportion above stated, "applying the amount due to the heirs, so far as may be "requisite, to the costs payable by them."

In obedience to this direction the Circuit Court entered a decree on the 5th of March, 1892, setting off to John A. Buckner and his minor child one-half of Melbourne plantation (R., p. 19). But neither the decree of the Supreme Court nor the decree of the Circuit Court gave them the right to the revenues of the property which accrued prior thereto. The Circuit Court, however, reserved for future adjudication

the rights of all parties concerning the disposition of the revenues that had accrued since the appointment of the receiver.

In consequence of this reservation Buckner filed a petition in the Circuit Court on the 6th day of April, 1893, praying for an account of the rents collected by the receivers for Melbourne since their appointment, and for payment of the share thereof claimed to be due him and his minor child, as half owners (R., p. 24).

The petition was referred to Wm. Grant, receiver, with directions to report the facts relative to the subject of the petition (R., p. 25).

The receiver filed the report called for, on the 5th of April, 1893, showing the revenues received from Melbourne plantation, and the disbursements made on account of taxes (R., pp. 30, 31).

This petition of Buckner is still pending and undetermined by the Circuit Court, never having been brought to a hearing by Buckner.

The receiver's accounts have been filed, showing the amounts received from rent of all the plantations and disbursed under order of Court from the date of the receivership to the date of the sale of the property, from which it appears that his disbursements exceeded his receipts by $4699.05 (R., pp. 30, 31), but that he has since been paid $1560 from the proceeds of the sale of the property, leaving a balance due him of $3139.05 (see answer to fourth cross-interrogatory, R., p. 17).

Buckner occupied the Melbourne plantation and the Morgana place during this litigation, under leases from the receiver. But after the decree of the Supreme Court was rendered in 1891 he paid no rent, and none was demanded of him, on the one-half of the Melbourne, which had been set off to him and his daughter. He paid the rent due on the other half for the year 1891, but refused to pay that due for 1892, and also refused to pay any rent for Morgana for 1891-92.

Plaintiff thereupon brought this suit for half the rent due on Melbourne for 1892, and for one-half the taxes paid on

the property for 1891-92, and for the rent of Morgana for 1891-92 (see account R., p. 8).

The answer of defendant admits that he leased Melbourne for the year 1892 at a rental of $1800, and that he owes one-half the taxes for 1891-92, which had been paid by the receiver for those years on his half, but claims that he is entitled to one-half the revenues of the plantations derived during the receivership as owner prior to 1891, under the decree of the Supreme Court of the United States, and demands judgment therefor in reconvention. He claims that he was relieved from paying rent for Morgana in 1891 on account of an overflow, and that he did not agree to pay rent for 1892 (R., p. 2).

It was conceded by the defendant in the lower Court that he owed $900 rent for one-half of Melbourne in 1892, and that he also owed $762.27 as his share of the taxes paid by the receiver on the plantation for 1891-92. As to the rent of Morgana for these years, the receiver says, in answer to the ninth interrogatory of his deposition (R., pp. 15, 16), that he leased the place in 1891-92 to Mr. Buckner by verbal agreement at an annual rental of $200, to be expended in repairs and improvements; but that Mr. Buckner neither paid the rent in cash nor expended it as agreed. Testifying on this point Mr. Buckner admits that he leased Morgana in 1891 for $200, to be paid in improvements, but says the improvements could not be made on account of an overflow that occurred. Speaking further, he says the place was partially overflowed in 1892, and that he did not collect enough rents from his tenants to repay the advances he made to them (R., p. 6).

The lower Court states in its opinion that there was no controversy as to the facts, and gave judgment in favor of plaintiff for $2070.22, for rents and taxes, and in favor of defendant for a like amount on his reconventional demand for rents claimed to be due him as owner of one-half of Melbourne plantation prior to 1891 (R., pp. 37, 38, 39).

From this judgment on the reconventional demand plaintiff in error appealed to the Supreme Court of the State of

Louisiana praying for a reversal. This was refused, and upon the application of the defendant the judgment was amended by increasing the amount awarded to Buckner to an amount equal to one-half of the whole rent collected prior to 1891, and as thus amended was affirmed (R., pp. 44–50). Upon this record the present writ of error was taken, based on the following ASSIGNMENT OF ERROR (R., p. 52):

I.

The State Court erred in permitting the defendant, John A. Buckner, to offer evidence to establish his reconventional demand against the objection of the plaintiff.

II.

Said Court erred in adjudging that the defendant, Buckner, was entitled to judgment against the plaintiff for one-half of the rents of the Melbourne plantation collected by plaintiff as receiver for the time prior to the date of the decree of the Supreme Court of the United States in the case of Mellen vs. Buckner, 139 United States, 410, when it appeared from the uncontradicted proofs that the rents collected by the receiver and those due by Buckner were not sufficient to pay the expenses of the receiver incurred in his administration, and his compensation, which by said decree were made a prior charge against said rents, thereby refusing to give proper effect to said decree.

III.

The disposition and distribution of the rents being within the exclusive jurisdiction of the Circuit Court of the United States which appointed plaintiff in error receiver, the State Court was without jurisdiction to award any part thereof to defendant on his reconventional demand, and the State Court erred in this respect.

IV.

The State Court, upon the undisputed facts in the case, erred in giving judgment in favor of the defendant on his

reconventional demand, and in reserving to him the right to recover from the receiver an additional amount on account of rents collected by the plaintiff for the use of Melbourne plantation, while it was under the plaintiff's administration.

V.

The State Court erred in requiring the plaintiff to account to such Court for the moneys in his hands collected by him as receiver under authority of the Circuit Court of the United States, which appointed him.

VI.

The State Court erred in deciding that the plaintiff, in his capacity as receiver, wrongfully collected of the defendant, rents for the whole of Melbourne plantation, while the same was in his possession and being administered by authority of the United States Circuit Court.

ARGUMENT.

The case involves, substantially, two questions of law: (1) Whether the State Court had jurisdiction to dispose of the revenues of the property in the hands of the receiver appointed by the Circuit Court of the United States; (2) Whether the State Court, if it could exercise such jurisdiction, correctly interpreted and gave proper effect to the decree and decision of this Court in the case of Mellen vs. Buckner, 139 U. S. 410, which awarded to Buckner only one-half of the revenues, after first deducting the expenses and compensation of the receiver.

I.

The suit of the receiver in this case was brought to recover rent due by Buckner for the use of Morgana plantation, in which he never had any interest, during 1891-92, and for the use of one-half of Melbourne plantation, which had been set off to the creditors of the Morgan succession, and for reimbursement of taxes paid by the receiver on Buckner's share,

accruing after he had been placed in possession. The right of the receiver to recover these items, amounting to $2070.22, as the judge of the District Court of the State declared in rendering judgment (R., p. 37), is undisputed; but against this liability to the receiver, his lessor, he claimed by a petition in reconvention that the receiver was liable to him for one-half of all rents collected by the plaintiff as well as those collected by W. L. McMillen, the prior receiver, from the date of the receivership to the time he was sent into possession of his one-half of Melbourne, early in January, 1891, without deduction of the expenses and compensation of the receiver during that period. As this claim did not in any sense grow out of the contract of lease upon which the plaintiff sued, it constituted in law a separate demand and could not be prosecuted against the receiver by a petition in reconvention unless he was suable thereon by an independent action. But we make no objection to the form of action if a State Court has jurisdiction to compel a receiver appointed by a Circuit Court of the United States to again account for a fund which he has collected and expended under direction of the Court which appointed him, as in this case.

At the trial in the State Court the plaintiff objected to the introduction of any evidence in support of the reconventional demand on the ground that exclusive jurisdiction of the subject matter of the claim in reconvention was vested in the Circuit Court, and reserved a bill to the ruling of the Court against him (R., p. 5). This was the proper course to take under the practice in Louisiana, which does not require an answer to a petition of reconvention.

Bayley & Pond vs. Stacy & Poland, 30 La. An. 1210.

The fundamental error of the State Court consisted in assuming authority to deal in any manner with a fund originally brought into the possession of the Circuit Court of the United States through its receiver, and which it had applied to the expenses of the receivership long before this suit was filed, and this in a proceeding to which Buckner was a party.

The Circuit Court of the United States having taken possession of the Melbourne plantation through its receiver, ac-

quired exclusive jurisdiction over all questions relating to its disposition, including its revenues, to the exclusion of all other courts. This rule is necessary to the administration of justice, and is recognized equally by Federal and State courts.

The rule is of universal application, that where a Federal and State Court have concurrent jurisdiction of the same subject matter, the Court which first obtains jurisdiction will retain it to the end of the controversy to the exclusion of the other.

The case of Hagan vs. Lucas, 10 Peters, 400, is an illustration of this principle. There the sheriff levied on property under a writ from the State Court, and the property was left in the custody of the defendant under a forthcoming bond, and the Federal Court held that the same property could not be levied on under a writ from the Federal Court.

And the Federal Courts have always and consistently respected the jurisdiction of the State Courts where they have acquired jurisdiction and possession of property through the appointment of receivers, and have refused to interfere with that jurisdiction.

Peale vs. Phipps, 14 Howard, 368, is a case exactly in point. In that case suit was brought in the United States Circuit Court for the Eastern District of Louisiana against a liquidator of the Agricultural Bank of Mississippi, appointed by the Circuit Court of Adams county, for mesne profits due plaintiff for property recovered from the bank. But the Court held that the Circuit Court had no jurisdiction of such a suit, as the liquidator could be sued only before the Court which appointed him and to which he was bound to account. The same rule was followed in the late case of Gellinger vs. Philipi, 133 U. S. 247, in which the Court recognized the right of our State Courts to exclusive jurisdiction in the settlement of claims against the estate of an insolvent. The question is one of comity between courts, and the universal rule is that the court which first takes cognizance of the controversy, and incidentally of the *res*, has the exclusive right to determine the litigation in all its branches. High on Receivers, Sec. 50.

Observance of this comity is necessary to the orderly ad-

ministration of justice as between the State and Federal courts having concurrent jurisdiction in the same territory. There is nothing in the present case requiring the Court to make it an exception to the general rule.

The United States Circuit Court, in a suit to which Buckner became a party, took possession of the Melbourne plantation through its receiver, who has collected the rents and expended them under its orders, as is shown by the receiver's accounts. Buckner leased the property from the receiver just as any stranger would have done, and obligated himself to pay to the Court a stipulated rental. Can he compensate the rent by setting up a claim against the Court for the income which the Court has collected and expended? It happens that he has acquired an interest in the property, but that fact gives him no more right to sue the receiver for past income in the possession of the Court than any other person would have. Such a claim does not grow out of the plaintiff's demand.

The administration of an estate through a receiver for the benefit of creditors must, upon principle, be put upon the same footing as that of the administration of successions, in which it has been held that a purchaser of property at a succession sale can not offset the price by proving that he is a creditor of the succession. His debt to the estate for the price is personal, but his claim is against the estate *in autre droit*, and cognizable only in the Court of Probates.

Gorton vs. Gorton, 12 La. 476.

Dees vs. Tilden, 2 An. 412.

Brooks vs. Walker, 3 An. 150.

Succession of Gayle, 27 An. 553.

The principle is necessarily the same where the creditor of an estate leases property from its legal representative, whether that representative be an administrator, executor, syndic or a receiver. He owes the rent as a personal obligation, which, like the property itself, or the price, belongs to the estate for the purposes of a distribution among creditors by the court having jurisdiction of the *res*. His claim against the estate, like that of all other creditors, must be placed on the account of the receiver and paid in due ceurse of law.

As to the rents due for Morgana the judgment of the District Court is manifestly correct. The defendant does not deny that he leased the property in 1891–92, at an annual rental of $200, which he was to expend in improvements. His excuse for not making the improvements is that in 1891 there was an overflow, and that in 1892 he lost more than the rent through the insolvency of his tenants. The occurrence of an overflow in 1891, as has been decided, did not excuse the payment of rent, and it does not appear that the improvements could not have been made before it came or after the water subsided, or that the overflow was such as to prevent their being made while it lasted.

But it is unnecessary to further consider the decision of the State Court as to the rental of Morgana, as the only question at issue here is the decision on the reconventional demand, the correctness of the judgment in favor of plaintiff for $2070.22, which includes the rent, being conceded.

II.

It is equally clear that the State Court erred in its interpretation of the decision of this Court, as rendered in Mellen vs. Buckner, 139 U. S. 410, even if it had jurisdiction to deal with Buckner's claim to the revenues of Melbourne plantation in the present suit.

The decision of the Supreme Court of the State is based on the mistaken theory that the award to Buckner of one-half of this plantation was a recognition by this Court of an original legal title in him to that extent, carrying with it an absolute and unqualified right to one-half of all the revenues collected by the receiver, without deducting therefrom the expense of the receivership, but we submit that such a theory finds no support in the decisions and decrees of this Court, rendered with reference to the questions here involved.

The first decree, in Johnson vs. Waters, 111 U. S. 640, annulled and set aside the title of the Kellam heirs to Melbourne plantation and ordered it sold, together with other property of Oliver J. Morgan, and the proceeds divided among his creditors. But it authorized the Kellam heirs,

now represented by Buckner, to propound before the master any claim they might have as creditors of Morgan's estate. Buckner, availing himself of this permission, presented a claim for $67,495.70, as the amount due the Kellam heirs, but at the same time filed a supplemental bill asserting title to the whole of Melbourne plantation, and averring that they were willing to abandon their claim as creditors and to accept the plantation in full satisfaction of their claim. The Circuit Court maintained the supplementary bill in part, and awarded 43 35-100 of Melbourne to the Kellam heirs, but requiring them to account for revenues. None of the parties were satisfied with the decree and the case was again appealed. One of the claims made by Buckner was that the Kellam heirs had expended large sums in restoring the plantation after frequent overflows, greatly in excess of income. After reviewing all the facts, the Court said: "In view of the conflicting evidence as to the annual value of the lands since Oliver J. Morgan's death, and the great lapse of time that has occurred, it would be difficult, if not impossible, to arrive at any precise and accurate adjustment of the equities arising out of all the complications of the case; and creditors might well say that their claims should have been satisfied when the estate was abundantly able to pay them before the restoration was necessary. The best that can be done in view of the interests of all the parties and the termination of a vexatious litigation, is to make such an award and decree as, on the whole, seems most equitable and just. With this view we see no better disposition to be made than to increase somewhat the percentage of interest in the lands to be reserved to complainants, and order a division of the lands, if they shall desire."

In conclusion the Court said: "We think it admissible, and under all the circumstances of the case would be just, to increase the interest to be reserved to the heirs of Oliver H. Kellam in the Melbourne plantation from 43 35-100 per cent. to 50 per cent. or one-half." See opinion in Mellen vs. Buckner, 139 U. S. 410.

In entering the formal decree this Court used the following

language in regard to the Kellam heirs: "It is ordered that instead of reserving to the said complainants the right to go before the master in said suit of Gay, administrator, and to prove their claims against the estate of the said Oliver J. Morgan, deceased, for any supposed indebtedness to them as heirs of Narcisse Deeson, the said claims are hereby decreed to be satisfied and paid, and that in place of said supposed claims the said heirs are entitled to have and retain a certain portion of said Oliver J. Morgan's estate free from the claims of his creditors as follows, to-wit: Two-fifths of the four plantations, Albion, Wilton, Westland and Morgana, are directed and decreed to be reserved for the benefit of the heirs of Julia Morgan, deceased; and one-half of Melbourne plantation is directed and decreed to be reserved for the benefit of the heirs of Oliver H. Kellam, Jr., and the remaining interest in the said plantations is decreed and adjudged to be subject to the payment and satisfaction of the debts due to creditors." *Ibid.* 415.

Having thus disposed of the corpus of the property of the succession with a view to a compromise and final settlement of the litigation upon purely equitable *considerations*, and without regard to strict legal titles, the Court, upon the same equitable principles, proceeded to distribute the revenues in the hands of the receiver, in the following language:

"Any moneys in the hands of the receiver, after paying "his expenses and compensation, are to be divided between "the creditors and heirs in the proportion above stated, apply-"ing the amount due to the heirs, so far as may be requisite, "to the costs payable by them."

It appears from the receiver's accounts (R., p. 30), which have been approved by the Court, and from the evidence of the receiver (R., p. 17), which is not disputed, that his salary, as fixed by the Court, and the expenses of his administration, exceeded by the sum of $4699.05 the whole amount collected by him from the revenues of the property, and that after deducting $1560 allowed him from the sale of the property set off to the creditors, there is still due him $3139.05. The fund having been more than exhausted in the

payment of these administrative charges, there was nothing due Buckner from this source, for which the State Court could give him judgment on his reconventional demand under any proper interpretation of the decision and decree of this Court, above quoted, even if it had jurisdiction to deal with the fund at all, which we deny.

Wherefore, plaintiff in error prays that the judgment of the District Court for the parish of East Carroll, in favor of the defendant on his reconventional demand, and the judgment of the Supreme Court, affirming and amending the same, be reversed and set aside, with directions to said courts to dismiss the defendant's petition of reconvention, and that he may have judgment for costs, and for such other and further relief as the nature of his case may require.

Respectfully submitted,

J. D. ROUSE,

Attorney for Plaintiff in Error.

No. 89.

Brief of Miller for D. & C.

Filed Nov. 14, 1898.

SUPREME COURT OF THE UNITED STATES.

No. 89.

WM. GRANT, RECEIVER, PLAINTIFF IN ERROR,

versus

J. A. BUCKNER, DEFENDANT IN ERROR.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

T. M. MILLER,
Of Counsel for Defendant in Error.

Thomason, Print., 526 Natchez Street, N. O.

SUPREME COURT OF THE UNITED STATES.

No. 89.

WM. GRANT, RECEIVER, PLAINTIFF IN ERROR,

versus

J. A. BUCKNER, DEFENDANT IN ERROR.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

This case has already been twice before this Court, and the question now brought up may be said to involve the determination of the party on whom shall be thrown the cost of the funeral expenses.

As the facts are not adequately stated in the brief for the plaintiff in error, we shall briefly recount the leading events which resulted in the present litigation.

I.

Oliver J. Morgan was in ante-bellum times a wealthy planter in Carroll Parish, Louisiana, where he owned five plantations. His wife died intestate in 1844, leaving two children as her sole heirs. Under the law of Louisiana, these two children, as heirs of their mother, became the owners of her half of the property belonging to the community of acquets and gains that had prior to her death existed between her and her husband. But this owner-

ship was subject to their father's right of usufruct during his life.

All the plantations standing in Mr. Morgan's name at the time of his wife's death belonged to the community. The state of the title to these plantations after Mrs. Morgan's death was therefore that an undivided half thereof belonged to Mr. Morgan, as surviving spouse, and an undivided fourth thereof belonged to each of the two children as heirs of their mother's half of the community. 111 U. S. 644.

II.

In 1857, Mr. Morgan filed proceedings in the District Court of Carroll Parish to effect a partition of the plantations thus owned in common by himself and his children. The plantations were sold in this partition suit and were bought in by Mr. Morgan. The legal title to the whole of the plantations was thus vested on the records in him alone, and his children became entitled only to their proportions of the price at which he bid in the property. The amounts thus due the heirs, $67,495.70 each, was secured by vendor's privilege on the plantations which Mr. Morgan had so bought in.

III.

In 1858 Mr. Morgan decided to divide his own estate between his two heirs in the proportions of ¾ thereof to one —Mrs. Julia Morgan—and ¼ thereof to the other—O. H. Kellam—and at the same time and by the same instrument to transfer to each of them property to be in satisfaction of their claims against him arising from their heirship to his wife's half of the community. To carry

out this purpose he executed two acts of transfer, as to the nature, intent and effect of which there has been much discussion in this litigation. But this Court has finally decided that Mr. Morgan had two distinct objects in view in making these transfers. One object was to satisfy the rights and claims which his two heirs had against him in virtue of their inheritance of their mother's share in the community. The other object was to transfer to his heirs his property in the proportions in which he wished them to inherit it from him, but subject, during his lifetime, to a usufruct in his favor.

The transfers may, therefore, be described as being, *first*, in part, a sale, or giving in payment, by Mr. Morgan to his heirs in satisfaction of what was due them as heirs of his wife; and, *secondly*, in part, a donation by Mr. Morgan to his heirs, to take effect at his death.

IV.

By the above mentioned acts of mixed sale and donation Mr. Morgan transferred to his daughter, Mrs. Julia Morgan, four plantations, viz: Wilton, Albion, Morgana, and Westland.

To his other heir, O. H. Kellam, Jr., a great grandson, he transferred Melbourne Plantation.

V.

Mr. Morgan died in 1860 Shortly before his death he made a will disposing of his property in such a manner that it would go to his heirs in the same proportions in which it was transferred to them by the acts of 1858, just referred to.

This will expressly revoked all prior wills. It was duly

probated and O. T. Morgan, the executor named therein, qualified and proceeded to administer the estate.

VI.

In 1868 proceedings were taken by the heirs against the executor to compel him to sell the plantations, in order, as it was alleged, to pay the heirs the amounts which, it was asserted, was due them for their proportion of the price at which Mr. Morgan had bid in the plantations in 1857. It was claimed that the amounts so due the heirs were secured by vendor's privilege, so that the heirs would prime all the other creditors of the estate, who were all unsecured.

The theory on which this proceeding was initiated was apparently that the acts of transfer, executed by Mr. Morgan in 1858, were intended to be gifts only, and that they left his indebtedness to the heirs, on account of their inheritance of their mother's share in the community, wholly unsatisfied.

The plantations were sold under orders obtained in the proceedings just mentioned, and were bid in by the heirs, so that they continued to hold them in the same proportions as before the sale.

VII.

In 1872, William Gay, a creditor of old Mr. Morgan, instituted suit to set aside the last mentioned sale of the plantations made in 1868 at the instance of the heirs. After a protracted litigation judgment was rendered in that suit setting aside the sales complained of and decreeing that a portion of the title to the plantations should be considered as still in the succession of old Mr. Morgan and as subject to his debts. From that judgment an appeal

was taken to this Court which was heard and decided at the October Term, 1883, and is reported in the case of Johnson, Exr., vs. Waters, Admr., 111 U. S. 640.

This Court decided in the case just referred to:

First. That, in so far as the transfers made by Mr. Morgan in 1858 were intended to operate as *donations* of his own property, they were void. For if the donation was intended to be one *inter vivos*, it was void, because the donor reserved to himself the usufruct of the immovable given. And if it was intended to be a *testamentary* donation, it was void for want of form, and also because the last will of Mr. Morgan, probated in 1860, had expressly revoked all prior wills. 111 U. S. 646, 648.

Second. That, in so far as the transfers of 1858 were intended to operate as *sales*, or givings in payment, to convey to the heirs property to be accepted by them in satisfaction of their rights acquired by inheritance of old Mrs. Morgan's share of the community, they were valid. The case was then remanded for further proceedings.

VIII.

After the remanding of the suit, Mr. Buckner, now the sole owner of the Kellam interest, intervened and asserted his rights as owner of that interest, under the act of transfer made in 1858 to O. H. Kellam, Jr.

From a judgment of the Circuit Court rejecting his demands, Mr. Buckner appealed to this Court, and this Court held that the transfer of 1858 to Kellam was valid to the extent of one-half of the property covered by it. Mellen vs. Buckner, 139 U. S. 388.

The effect of the judgment of this Court is to recognize

that the Kellam interest in and title to Melbourne Plantation was for an undivided half thereof, and that that title was acquired under and dated from the act of transfer executed by Mr. Morgan in 1858. This necessarily follows from the recognition of the validity of the act of 1858, in so far as it was intended to be a sale or giving in payment.

IX.

Some time after the return to the Circuit Court of the mandate of this Court in the case of Johnson vs. Waters, 111 U. S. 640, in May, 1884, the Circuit Court appointed a Receiver to take charge of all the property of old Mr. ~~Johnson's~~ Morgan's which might be brought into his succession by means of this suit. From the very nature and object of the suit in which the Receiver was appointed, his authority could extend only to such property as belonged to Mr. ~~Johnson~~ Morgan, and did not and could not embrace property belonging to others. The sole object of the suit in which the Receiver was appointed was to recover Mr. ~~Johnson's~~ Morgan's property and to subject it to the pursuit of his creditors.

But the Receiver proceeded to claim and to take possession of the whole of Melbourne Plantation, as if the whole of it belonged to Mr. ~~Johnson's~~ Morgan's succession and was liable for his debts. Notwithstanding the fact that this Court had recognized the validity of the transfer to O. H. Kellam in 1858, in so far as that transfer was a sale, and had hereby recognized that a title to part of Melbourne had existed in the Kellams and their assigns since 1858, and notwithstanding the fact that Mr. Buckner, the representative of the Kellam interest, was in actual possession of the plantation, the Receiver ignored both the title and

the possession of Mr. Buckner, and himself took possession of the plantation. Mr. Buckner was forced either to quit the plantation altogether or else to rent it as a whole from the Receiver. Rather than leave a place on which he had been living for many years and in the improvement of which he had expended large sums of money, and to a large proportion of which he was confident he had a perfectly valid title, which would be sure to avail in the end, Mr. Buckner submitted and rented the entire plantation from the Receiver.

The ground upon which the Receiver took possession of the entire plantation was very obviously a misapprehension of the effect of the decree of this Court in 111 U. S. 640. He supposed that that decree had declared the act of 1858 to be invalid both as a donation and as a sale. Under this interpretation of the decree, he concluded that the entire plantation was thrown back into the succession of Mr. Morgan. But, as we have seen, this was an erroneous interpretation of the first decree of this Court. For this Court had, as it afterwards declared in 139 U. S. 388, admitted the validity of the act of 1858 in so far as it was an act of sale, and had decreed it to be void only in so far as it was an act of donation. In taking possession of the entire plantation, the Receiver and the Circuit Court were simply acting on a mistaken interpretation of the meaning and effect of the decree of this Court.

Acting on the mistaken supposition that the act of 1858 had been declared by this Court to be a nullity *in toto*, and that consequently the entire plantation fell back into the succession of Mr. ~~Johnson~~ Morgan, the Receiver collected and used

the whole of the rents of the entire plantation up to the 1st of January, 1891.

On March 23, 1891, this Court decreed that Mr. Buckner's title, derived under the act of 1858, covered an undivided one-half of the Melbourne Plantation. Mellen vs. Buckner, 139 U. S. 388. Obviously this decree did not *create* any title in Mr. Buckner, nor did it *transfer* to him a title till then vested in someone else; it did nothing but *declare* that he was the holder of the title which *Mr. Morgan had created* by the act of 1858, and determined the proportion of the plantation conveyed to him thereby.

Two years elapsed after the decree in the Mellen vs. Buckner case before the interest of the succession of Mr. O. J. Morgan in Melbourne was sold. The Receiver claims one-half of the rent for these two years, that is, one-half of the rent for the years 1891 and 1892. But Mr. Buckner refuses to pay this half. He insists that as he has been recognized and declared to be the owner of one-half of the plantation, under the act of transfer in 1858 to O. H. Kellam, Jr., the author of his title, he is, by virtue of his ownership of one-half of the plantation, entitled to one-half of the rents collected under the lease thereof; and that if he be credited with the portion of the paid rents to which he is entitled, his obligation for the half of the unpaid rents for the years 1891 and 1892 will be much more than discharged.

Now the statement filed by the Receiver shows that for the years 1886 to 1891, both inclusive, he collected from Mr. Buckner the total sum of $12,500 for the rental of the whole of Melbourne Plantation during that period. But as the succession of Mr. Morgan owned only one-half of the

plantation, the Receiver, representing and collecting for that succession only, was entitled to only one-half of the rents collected during this period, and the owner of the other half of the plantation, Mr. Buckner, was entitled to the other half. That is to say, that $6,250 of the rents should have gone to the Receiver as representing the estate of Mr. Morgan, the owner of one-half of the plantation, and $6,250 should have gone to or been retained by Mr. Buckner, the owner of the other half. To the demand that he should pay one-half of the rent for the plantation for the years 1891 and 1892, Mr. Buckner replied, that on a proper settlement and accounting of all the rents collected by the Receiver, it would appear that the Receiver owed Mr. Buckner about $4,650 after charging him (Buckner) with the half rents for the years in question. Mr. Buckner, therefore, peremptorily refused to comply with the Receiver's demand to pay the rent claimed by the Receiver. Thereafter the Receiver brought this suit against Mr. Buckner in the District Court for East Carroll Parish, Louisiana.

In his petition the Receiver avers that Mr. Buckner is indebted to him for one-half of the rent of Melbourne for the years 1891 and 1892 at $1,800 a year, and for one-half of the taxes for the same two years on said plantation, and also for the rent of Morgana Plantation for the same two years at $200 a year.

In his answer Mr. Buckner pleaded compensation, arising on the facts as above set forth, to the claims for rent and taxes of Melbourne, and denied that he was under any obligation whatsoever for the rent claimed to be due for Morgana.

The District Court in which the Receiver brought the suit, gave judgment in favor of the plaintiff on all his demands for the sum of $2,070.22, but decreed that this liability of the defendant was compensated and extinguished by the amount of rent which the Receiver had collected in excess of the proportion coming to the estate of Morgan during the entire period from 1886 to 1892. From this judgment the Receiver appealed to the Supreme Court of Louisiana, and that tribunal affirmed the judgment appealed from, with an amendment giving Mr. Buckner the right to demand of and recover from the Receiver the remainder of the amount due to Mr. Buckner, after using a part of the excess collections to compensate the claim of the Receiver allowed in the judgment. The present appeal is from the just mentioned judgment of the Supreme Court of Louisiana.

ARGUMENT.

Plaintiff in error has assigned six errors, but, as he admits in his brief (p. 6), only two questions of law are involved in them all, viz:

1. Whether the State Court had jurisdiction to render judgment compensating the claim set up in the petition, as it did.

2. Whether the State Court correctly interpreted and applied the judgment and decree of this Court rendered in Mellen vs. Buckner, 139 U. S. 410.

We shall first take up and discuss the second proposition.

I.

DID THE STATE COURT CORRECTLY INTERPRET AND APPLY THE DECISION AND DECREE OF THIS COURT RENDERED IN MELLEN VS. BUCKNER 139 U. S. 388, 410?

The plaintiff in error does not clearly state what, in his opinion, is the proper interpretation and effect of that decree. The implication from his argument is that he thinks that the title of Mr. Buckner was *created* by the decree, that its *existence* dates from the decree, and that prior thereto the title had no existence in law or fact, actually or potentially. Assuming that the Kellam-Buckner title came into existence only at the date of the decree of this Court on March 23, 1891, the Receiver thence argues that Mr. Buckner has no interest or right in the revenues of the place accrued prior to the time when his title began, that is, prior to March 23, 1891.

The argument of the appellant in regard to the title is not clearly expressed, but we believe that his position on that point is as we have stated it. For the question arising under the issues in this case is, necessarily, as to the date of the commencement of the Buckner title. If that title originated under the act of 1858, as we contend that it did, then the holders of the title are and always have been entitled to the same proportion of the rents of the place which they had to the title. And the proportion of the rents belonging to the holders of the Buckner title can no more be applied to the payment of the debts of Mr. Morgan than their proportion of the plantation itself could be so applied. In other words, it is incontrovertible that the Buckner half of Melbourne cannot be subjected to the debts of Mr. Morgan. It is equally incontrovertible that the rents accruing to the

Buckner half interest in that plantation cannot be subjected to Mr. Morgan's debts, nor to the payment of the costs of suits brought by his creditors against his succession. In determining, therefore, what rents are justly applicable to the debts and costs of Mr. Morgan's succession and what belong to the Buckner title, it is essential to determine the date at which the Buckner title was created. For from that date the holders of that title own their due proportion of the rents.

On this point we submit that the opinion and decree of this Court in both branches of the case which have been before it, clearly establish that the Kellam-Buckner title was created by and dates from the act of transfer made by Mr. Morgan in 1858. It is in fact impossible to assign any other beginning to this title.

But, the Receiver argues, this Court, though it may have adjudged the title to be in Buckner to one-half of the plantation, did not declare that he was entitled to one-half of the revenues. We submit that the right to the revenues necessarily followed the title. To decree that a man is and from a given date has been the owner of a particular piece of property, inevitably implies that he is also the owner of the revenues of that property from that date in the same proportion and to the same extent to which he owns the property. The rents follow the title. Having determined the person in whom the title resided and the act of transfer which created his title, it was unnecessary to add that he was also entitled to the rents corresponding to his title from the date of the act creating his title. The owner of the title would lose his right to the rents only in case that

the decree which declared his title expressly provided that he should not have the rents.

Not only does the decree of this Court not expressly provide that the rents shall not follow the title, but it clearly intends otherwise. The decree declares that the Buckner half of the plantation shall go to the owners thereof free from Mr. Morgan's debts and from any costs and charges of the receivership proceedings. To forfeit the *rents* accruing to that half and to turn them over to the receivership, would be to subject the most valuable element of the ownership, the revenues of the property, to the debts of Mr. Morgan and to the costs of the proceedings to enforce those debts. But not only is it clear from the terms of the decree of this Court that the owners of the Kellam-Buckner interest in Melbourne were to have that interest free from the debts and costs of the succession of Mr. Morgan, and that, as a necessary incident to the acquisition of the interest itself, they would also have the rents accruing to that interest, equally free, but this result has been reached by the Circuit Court in proceedings to which the Receiver was a party.

On June 3, 1893, the Circuit Court rendered a decree which held the Buckner interest in Melbourne liable for the costs of the receivership proceedings. Application was made by Mr. Buckner for a rehearing as to that part of this decree which held his interest in Melbourne liable for the costs and disbursements of the receivership suit. In passing on this application, the Circuit Court was required to determine the nature and date of the Buckner title, so as to ascertain whether it had passed under the

dominion of the Receiver and had become liable for the costs of the receivership suit. For obviously if the Buckner title dated only from the date of the decree of this Court, recognizing it on March 23, 1891, then up to that date the whole of Melbourne had been in the possession of the Receiver as a part of Mr. Morgan's property and the revenues would be liable for the costs of the suit. But if the Buckner title had antedated the receivership, then the property covered by that title was not embraced in the receivership and was not liable for the costs thereof. So the Circuit Court considered what was the real nature, origin and date of the Kellam-Buckner title. And, in announcing their conclusions on this question, they say:

"The opinion of the (Supreme) Court is clear that the act of 1858 was void as a donation, and it apparently intimates, as this Court afterwards decided, that it was equally void as a sale. The opinion and decree of the Supreme Court, however, rendered in the consolidated cases of Mellen vs. Buckner, reported in 139 U. S. 388, when carefully read and considered in the light of the facts and circumstances of the case, puts a different view upon the matter. In that case the act of 1858, while still held to be void as a donation, is held to be valid as a sale or appropriation for so much of the lands in question as were received by the heirs of Narcisse Deeson in payment of the debts due to them on account of the interest Narcisse Deeson had as the wife of Oliver J. Morgan in the community property, and it is said that this is substantially the view which the court entertained, although not fully explained in the case of Johnson vs. Waters.

* * * * * *

"From this last opinion and decree of the Supreme Court in the matte · we are forced to conclude that the portions of lands set off and adjudged to the heirs of Julia

Morgan and heirs of O. H. Kellam, Jr., were so set off and adjudged to them as the owners thereof in their own right as the heirs of Julia Morgan and O. H. Kellam, Jr., who were the heirs of Narcisse Deeson, the wife of Oliver J. Morgan, and not to them in any way as the heirs of Oliver J. Morgan, or as creditors or claimants of his estate.

* * * * * *

"To the extent of this increase the heirs of Julia Morgan and Oliver H. Kellam, Jr., participated in the fund recovered in the original case of Gay, Admr., vs. Morgan, Exr., but the careful reading and consideration which we have given the opinions and decrees of the Supreme Court, and particularly the supplemental decree in all the cases consolidated, give us the firm impression that the court intended to hold and declare that the portions recovered by said heirs were theirs of right, and that they were to have them, not only free of the claims of creditors of the estate of Oliver J. Morgan, but free from *all costs and claims* except as in the several decrees adjudged and as thereafter might be necessary in effecting partition." Tr. pp. 33 *et seq.*

The decree rendered pursuant to this opinion provided that "the said John A. Buckner and Etheline Buckner be, and are, now decreed to take and hold said one-half of the said Melbourne Plantation allotted to them free from said charge and liability for said costs, disbursements and solicitor's fees, charged against them in said decree of June 2, 1893, as contribution to the expenses of the prosecution of said cause, No. 6612, and of the causes herein consolidated, but that as to all other taxable costs, the same shall stand as the same are charged and decreed in the decree of the Supreme Court and other decrees of this Court made under and in obedience to the mandate of the Supreme Court as the same are recorded herein, and that, except as modified by this decree, the said decree of June 2 stand in all things confirmed and final." Tr. p. 37.

The State Court in the present suit has given the same interpretation and effect to the decree of this Court which

had been given to it by the Circuit Court; that is, it held that the decree of this Court recognizes the Kellam-Buckner title as having been created by the act of transfer made by Mr. Morgan in 1858, and declares that the holders of that title are not liable for the debts and costs of the succession of Mr. Morgan. It is an inevitable corollary to this interpretation that the rents of the Kellam-Buckner interest go to the holders of that interest free from the costs of the receivership.

The Receiver, however, relies upon a single clause in the decree of this Court in the case in 139 U. S. 410 as showing that this Court intended that the Kellam-Buckner interest should in any event be liable for the compensation of the Receiver. That is, he contends in effect that the decree of the Court puts the compensation of the Receiver on a different footing from the other costs of the receivership proceeding. Even when wholly isolated from its context and read apart from the rest of the decree, the clause cited by the Receiver will not, in our opinion, bear the interpretation put on it. And when considered in connection with what immediately precedes and follows it, it becomes perfectly clear that the clause in question was not intended to have the effect which the Receiver now contends should be given to it. Let us see.

In the Mellen vs. Buckner case (139 U. S.), this Court decided that the heirs of O. H. Kellam, Jr., had title to an undivided one-half of Melbourne, and that the heirs of Julia Morgan had title to an undivided two-fifths of the other four plantations. The decree then provided that the heirs might, if they chose, take their respective portions in the plantations by having them set off in severalty, free from

the debts and costs of the succession of Oliver J. Morgan; or that they might permit their portions in the plantations to be sold with the portions belonging to the succession, and take their proportion of the price. And in the event of the sale of the plantations as entireties, in that case, the proceeds of the sale, over and above expenses, including the costs of the receivership, were to be divided between the heirs and the creditors in the proportions in which the title was adjudged to be in the succession and in the heirs. The opinion of the Court, after providing that the heirs may, if they wish, take their parts in severalty, goes on:

"If the heirs should not desire to have their portions set off separately, then the whole property is to be sold, and they are to receive their proportional share of the proceeds, but no allowance for buildings. If any money remains in the hands of the Receiver, beyond the expenses incurred by him, and his proper compensation, they should be divided between the creditors and heirs in the proportions above stated; and the portion due to the heirs should be applied, as far as requisite, to the payment of costs awarded against them."

It is clear that the last sentence in the paragraph just quoted, which is the sentence on which the Receiver relies, refers only to the division which is to take place in the event that the heirs should elect to have the plantation sold as entireties by the Receiver, without setting their portions apart to them in severalty. But if the heirs should elect to segregate their interests from those represented by the receivership, and should take their portions in severalty, then the revenues incident to those interests would be theirs of right, and would come to them as the incident of the property, and there would be no division to be made between

them and the creditors. The heirs would simply take their portions of the plantations and with it the corresponding portion of the revenues, and the remainder would go to the creditors. The severance of the interests in the plantations would inevitably imply a similar severance of the revenues.

It is clear that the Circuit Court so understood the decree. The Buckners elected to take their half of Melbourne in severalty. (Tr. p. 21). The Circuit Court in its final decree has declared that the Buckners take their interest in Melbourne free from liability for "costs, disbursements and solicitor's fees." (Tr. p. 37). Then neither the Buckner interest in Melbourne, nor the revenues accruing to that interest, can be subjected to pay any of the costs, disbursements or solicitor's fees incurred in the receivership established over the property of O. J. Morgan.

This being the case, the Receiver, on a full accounting of all the rents of Melbourne from 1886 to 1892, has already received about $4650 more of the rents accruing during that period than he is entitled to, if the rents accruing to the Buckners are, like their interest in Melbourne, free from costs, disbursements and fees.

The State Courts have done nothing but adopt and give effect to the decree of this Court as understood and interpreted by the Circuit Court in a proceeding to which the Receiver was himself a party.

We submit that on the first proposition it is clear that the State Courts did properly interpret and apply the decree of this Court.

II.

The other question involved is:

DID THE STATE COURT HAVE JURISDICTION TO ALLOW THE DEFENSE SET UP?

By reference to the accounts filed by the Receiver (Tr. pp. 26 to 31), it will be seen that the balance of $4699.05, which he claims to be due him as Receiver, on April 7th, 1893, was simply the balance due him on his annual compensation of $2000. On this balance he has since that date received $1500. So that the amount now due the Receiver on his salary is only about $3200. And the object of this suit is to compel the owners of one-half of Melbourne to pay into the receivership rent for their own half of that plantation, in order to satisfy a balance of salary due to the Receiver of the property of the succession of O. J. Morgan.

We have seen that the title of the Buckners to their half of Melbourne long antedated the appointment of the Receiver to the property of O. J. Morgan; we have seen that this Court and the Circuit Court have decreed that the Buckners might, if they wished, take their half interest in the plantation, in severalty, free from the costs and disbursements of the receivership proceedings; we have seen that the Buckners formally elected to take their interest in severalty and free from the debts of O. J. Morgan and from the costs of and disbursements of the receivership; we have seen that the only charge shown on the accounts of the Receiver, as still due, is that for his own salary; so that the object of this suit is, notwithstanding the decree of this Court and of the Circuit Court, to subject the Buckner interest in Melbourne, or the rent due that interest, to liability for the indebtedness incurred in the receivership established over the property of O. J. Morgan.

But, the Receiver argues, while it may be true that he

has already received from the rents of Melbourne, from 1886 to 1892, more than $6250 above the sum coming to that part of Melbourne over which the receivership extended, still he is entitled to bring suit in the State Court against Mr. Buckner to compel him to pay into the receivership the whole of the rent, and that it is competent only to the Federal Court to decide in what proportions this entire rent must be divided. That is, by suing Mr. Buckner in the State Court, he thinks he can prevent Mr. Buckner from setting up the defense of compensation, resulting from the balance on the proper accounting of all the rents, which he could unquestionably have set up if the suit had been brought in the receivership proceedings in the Federal Court.

We submit that it would be grossly inequitable to permit the Receiver to go out of his own Court and bring a suit in another Court on the debit items of an account in such a way as to preclude the defendant from setting up as a defense the credit items in his favor arising from previous payments made by him to the Receiver in the same matter. Especially would the inequity of such a course be manifest when the sole object of the suit is to get money to pay the Receiver himself, and when the defendant had already sought to obtain an accounting from the Receiver in the receivership suit of the entire transaction. For Mr. Buckner filed a bill in the receivership suit on April 6, 1893, demanding from the Receiver a full accounting and settlement of all the rents of Melbourne. Tr. p. 24.

To this bill the Receiver could and should have filed a cross-bill, setting up any claims he might deem himself to have against Mr. Buckner in respect of such rents. In this manner the items of debit and credit would have been

determined by the Court of the receivership, and the balance due and the party by whom due would have been determined.

But the Receiver apparently sought to evade this suit by going into the State Court and contending that the State Court could hear his complaint and demand against Mr. Buckner, but could not hear Mr. Buckner's defense to that demand. That is, the Receiver contends that it is competent for him to remove into the State Court his demand against Mr. Buckner on the debit items of the rent account, but that it is not competent for Mr. Buckner to present in that Court the credit items which more than compensate the demands of the Receiver. And all this in a suit in which, as the Receiver's own accounts show, the Receiver is the sole person interested.

We submit that when, under the foregoing circumstances, the Receiver, on Nov. 26, 1896, more than three years after he had been sued in his own Court, of his own volition and without any compulsion, undertook to sue Mr. Buckner in the State Court, he thereby necessarily submitted to the State Court, the tribunal of his own selection, the entire controversy between himself and Mr. Buckner. It was competent, as the result of the Receiver's own action, for the State Court to pass on the entire matter, both as to what the Receiver owed Mr. Buckner and as to what Mr. Buckner owed the Receiver, to strike the balance on this account and to give judgment therefor to the party entitled.

We submit that the judgment of the Supreme Court of Louisiana should, therefore, be affirmed.

Respectfully submitted,

T. M. MILLER,

Of Counsel for Defendant in Error.

GRANT *v.* BUCKNER.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 89. Submitted November 29, 1898. — Decided December 19, 1898.

Certain real estate in Louisiana, consisting of five plantations standing in the name of J. Morgan, was community property. His wife died in 1844, leaving two children as her heirs; and in 1858 Morgan conveyed all the real estate to his children and grandchildren. He died in 1860, and in 1872 his creditors took proceedings to set aside the conveyance and to subject his interest in the property to the payment of his debts. Their contention was sustained by this court in *Johnson* v. *Waters*, 111 U. S. 640. Then a receiver was appointed to take charge of both interests in all the property. The portion to which this suit relates was in the possession of Buckner, claiming under the conveyance made by Morgan in 1858. The receiver threatening to eject him, Buckner, in order to remain in possession, took a lease of the whole plantation from the receiver. In 1891 it was decided in *Mellen* v. *Buckner*, 139 U. S. 388, that one undivided half of the plantation belonged to Buckner, and that only the remaining half was subject to the debts of Morgan, and that if the heirs should not desire a severance of their portions, the whole should be sold and the proceeds divided in accordance with the decree. The sale was made two

Opinion of the Court.

years later. Buckner paid the receiver rent for the whole plantation from 1884 to 1891, but paid nothing thereafter. This action was commenced by the receiver in a state court of Louisiana to recover from Buckner rent for one half of the estate for 1891 and 1892, and one half of the taxes thereon for those years. Buckner in reply claimed the right to offset against the receiver's demand one half of the rent which he had paid to him between 1884 and 1891, and asked for judgment against the receiver for the surplus. The Supreme Court of Louisiana sustained the offset and reserved to Buckner the right to recover the surplus. *Held:*

(1) That Buckner was entitled to set off against the rent unquestionably due for the undivided half of the plantation for 1891 and 1892 one half the amount paid by him for rent between 1884 and 1891;

(2) That he was not precluded from obtaining the benefit of this right in the state courts by the fact that the receiver was an officer of the Federal court, or by any proceedings had in that court, as the receiver voluntarily went into the state court;

(3) That the jurisdiction of the state court was clear, and its judgment is affirmed.

THE case is stated in the opinion.

Mr. J. D. Rouse for plaintiff in error.

Mr. Thomas Marshall Miller for defendant in error.

MR. JUSTICE BREWER delivered the opinion of the court.

This case comes on error to the Supreme Court of the State of Louisiana. It is perhaps the last step in a litigation which has been going on for a quarter of a century, and which has twice appeared in this court. *Johnson* v. *Waters*, 111 U. S. 640; *Mellen* v. *Buckner*, 139 U. S. 388. In those cases the full story of the litigation is told. For the present inquiry it is sufficient to note these facts: Prior to the late civil war Oliver J. Morgan was the owner of five plantations in the State of Louisiana. His wife died intestate in 1844, leaving two children as her sole heirs. The property standing in his name was community property. In 1858 he conveyed the plantations to his children and grandchildren. The purpose of this conveyance was, first, to secure to the grantees their shares in the property as the heirs of his wife; and, secondly, to make a donation from himself. He died in 1860. In 1872

certain creditors of Morgan, creditors of him individually and not of the community, brought suit in the Circuit Court of the United States to set aside the conveyance, and subject his interest in the property to the payment of their debts. Their contention was sustained by the Circuit Court, and its decree was substantially affirmed by this court. *Johnson* v. *Waters*, *supra*. Thereafter, and in May, 1884, the Circuit Court appointed a receiver to take charge of all the property conveyed by Morgan. Melbourne plantation was at the time in the possession of the present defendant in error, claiming under the conveyance made by Morgan in 1858. After the appointment of the receiver the defendant in error, rather than be dispossessed, leased from him the plantation. The litigation continued, and, new parties being named, came before this court again in 1889. *Mellen* v. *Buckner*, *supra*. It was decided in 1891 that one undivided half of the Melbourne plantation belonged to the defendant in error, and that only the remaining half was subject to the debts of Morgan. The language of the decree was: "The said heirs are entitled to have and retain a certain portion of said Oliver J. Morgan's estate free from the claims of his creditors, as follows, to wit: two fifths of the four plantations, Albion, Wilton, Westland and Morgana, are directed and decreed to be reserved for the benefit to the heirs of Julia Morgan, deceased; and one half of Melbourne plantation is directed and decreed to be reserved for the benefit of the heirs of Oliver H. Kellam, Jr., deceased; and that the remaining interest in the said plantations is decreed and adjudged to be subject to the payment and satisfaction of the debts due to the administrator of said William Gay," etc.; and further, after providing for other matters, "but if the heirs shall not desire a severance of their portions, then the whole property to be sold, and they to receive their respective portions of the proceeds, but no allowance for buildings. Any moneys in the hands of the receiver, after paying his expenses and compensation, are to be divided between the creditors and heirs in the proportions above stated, applying the amount due to the heirs, so far as may be requisite, to the costs payable by them." Two years thereafter the interest of

Morgan in the plantation was sold in accordance with the terms of the decree. The defendant had paid to the receiver the rent of the entire plantation from 1884 up to the decree in 1891, but paid nothing thereafter. This action was commenced by the receiver in the district court of the seventh judicial district for East Carroll Parish, Louisiana, to recover one half the stipulated rent of the Melbourne plantation for the years 1891 and 1892, as well as one half of the taxes thereon for those years. The defendant answered, not questioning his liability for the matters set forth in the petition, but alleging that between 1884 and 1891 he had paid the receiver rent for the entire plantation, one half of which had been finally adjudged to be his property, and not subject to the claims of creditors of Morgan, and prayed to set off the one half of the rent wrongfully collected between 1884 and 1891 against the one half due for the years 1891 and 1892, and for a judgment over against the receiver for any surplus. The trial court sustained his defence so far as to decree a full set-off to the claims of the receiver. The Supreme Court of the State affirmed the trial court in this respect, but amended the judgment so "as to reserve the defendant's right to demand of and recover from the plaintiff the residue of the amount of the rents he has collected in excess of the sum actually due by the defendant, after a sufficiency thereof has been used to extinguish by compensation the demands of said receiver in this suit." 49 La. Ann. 668. Whereupon the receiver sued out this writ of error.

Two questions are presented: First, was the defendant entitled to set off against the rent unquestionably due for the undivided half of the plantation for 1891 and 1892, one half the amount paid by him for rent between 1884 and 1891, on the ground that it had been finally adjudged that he was the owner of one undivided half of the plantation, and therefore that the receiver had improperly collected the rent therefor; and, second, if he was entitled to such set-off, was he precluded from obtaining the benefit of it in the state courts by the fact that the receiver was an officer of the Federal court, or by any proceedings had in that court?

The contention of the receiver is that the defendant's right to one half of the plantation dates from the decree in 1891, while the defendant insists that it dates from the conveyance in 1858, and that the decree only determined a preëxisting right. We concur in the latter view. As a rule courts do not create but simply determine rights. The adjudication that the defendant was entitled to an undivided one half of the plantation was neither a donation nor an equitable transfer of property in lieu of other claims. It was a determination of a preëxisting right, and that right dates and could only date from the conveyance in 1858.

The conclusions of the Circuit Court of the United States, as expressed in an opinion and passed into a decree — a decree not appealed from, and, therefore, final between the parties — are to the same effect. Such opinion and decree appear in the record. In the opinion, which was announced after the decision of this court in 139 U. S., *supra*, it was said: "From this last opinion and decree of the Supreme Court in the matter, we are forced to conclude that the portions of lands set off and adjudged to the heirs of Julia Morgan and heirs of O. H. Kellam, Jr., were so set off and adjudged to them as the owners thereof in their own right as the heirs of Julia Morgan and O. H. Kellam, Jr., who were the heirs of Narcisse Deeson, the wife of Oliver J. Morgan, and not to them in any way as the heirs of Oliver J. Morgan or as creditors or claimants of his estate. . . . The heirs of Julia Morgan and Oliver H. Kellam, Jr., participated in the fund recovered in the original case of *Gay, Administrator*, v. *Morgan, Executor, et al.*, but the careful reading and consideration which we have given the opinions and decrees of the Supreme Court, and particularly the supplemental decree in all the cases consolidated, give us the firm impression that the court intended to hold and declare that the portions recovered by said heirs were theirs of right, and that they were to have them, not only free of the claims of creditors of the estate of Oliver J. Morgan, but free from all costs and claims except as in the several decrees adjudged, and as thereafter might be necessary in effecting partition." And in the decree it was among

other things adjudged that "so much of said decree of June 2, 1893, as the same is of record herein, as charges or attempts to charge the said John A. Buckner and Etheline Buckner as the owners of one half of Melbourne plantation, or that attempts to charge their said one half of said Melbourne plantation with lien privilege to contribute to or recuse the contribution of the sum of seven thousand three hundred and forty-seven $\frac{30}{100}$ dollars to the payment of costs, disbursements and solicitors' fees allowed by the court in and for the prosecution of the bill and action in case No. 6612 of the cases herein consolidated, be, and the same are, cancelled, abrogated, annulled and taken from said decree, and that the said John A. Buckner and Etheline Buckner be, and are, now decreed to take and hold said one half of the said Melbourne plantation allotted to them free from said charge and liability for said costs, disbursements and solicitors' fees charged against them in said decree of June 2, 1893, as contribution to the expenses of the prosecution of said cause No. 6612 and of the causes herein consolidated." Obviously, the effect of this last decree was to materially modify the terms of prior orders and decrees, and to change the relations of the defendant as the owner of one half of the Melbourne plantation to the receivership.

The provision in the decree of this court in reference to the division between the creditors and the heirs of the moneys in the hands of the receiver after paying his expenses and compensation is one evidently applicable in case of the sale of the entire property, and cannot be construed as charging against the defendants, the heirs of Mrs. Morgan, any share of the costs incurred by the creditors of Mr. Morgan in their efforts to subject his property to the payment of their debts.

Rents follow title, and the owner of the reality is the owner of the rent. So that from 1884 to 1891, and while the question of title was in dispute, the defendant was paying to the receiver rent for an undivided half of the plantation, property which was absolutely his own, and which the receiver ought not to have had possession of. The rent thus collected belonged to the defendant, and could not be taken

by creditors of Morgan or appropriated to pay the cost of their lawsuits. So it is that the receiver, having in his possession money belonging to the defendant, to wit, the rent of one half the property from 1884 to 1891, now asks a judgment which shall compel defendant to pay him a further sum. This cannot be. This is not a case in which a defendant indebted to an estate, which is insolvent and can therefore pay its creditors only a *pro rata* amount, seeks to set off a claim against the estate in absolute payment of a debt due from him to the estate, thus obtaining a full payment which no other creditor can obtain. For here one undivided half of the plantation was never the property of the estate vested in the receiver. It was wrongfully taken possession of by him. The rent therefor all the while belonged to the defendant, and the receiver holds it not as money belonging to the estate but to the defendant. To allow him to keep that money and still recover an additional sum from the defendant would be manifestly unjust.

It is said in the brief that the court first acquiring jurisdiction has a right to continue its jurisdiction to the end. We fail to see the application of this. The receiver voluntarily went into the state court, and having voluntarily gone there cannot question the right of that court to determine the controversy between himself and the defendant. A similar proposition was often affirmed in cases of bankruptcy, although by section 711, Revised Statutes, the courts of the United States are given exclusive jurisdiction "of all matters and proceedings in bankruptcy." *Mays* v. *Fritton*, 20 Wall. 414; *Winchester* v. *Heiskell*, 119 U. S. 450, and cases cited in the opinion. The same rule applies here. The question presented is not how the estate belonging to the receiver shall be administered, but what is the estate belonging to him. The two questions are entirely distinct. Further, the right to sue a receiver appointed by a Federal court without leave of the court appointing him is granted, by the act of August 13, 1888, c. 866, § 3, 25 Stat. 436. A counterclaim or set-off comes within the spirit of that act. And certainly no objection can be made to the allowance of a set-off, when as here it is

simply in harmony with the decrees of the Federal court, and in no manner questions their force or efficacy.

The jurisdiction of the state court is therefore clear, and the judgment of the Supreme Court of Louisiana is

Affirmed.